

D

CORRIGENDA.

R. S. O. c. 10, s. 72 referred to in note (z) p. 63, and note (h) p. 121, was amended by 42 Vic. c. 4, sec. 15, by striking out the words "at least one month," where they occur in that section.

L

L

VOZ

44
1

A M A N U A L

ON THE

LAW AFFECTING VOTERS' LISTS

FOR

LEGISLATIVE AND MUNICIPAL ELECTIONS
IN ONTARIO,

CONTAINING THE

*VOTERS' LISTS ACT (R.S.O. c. 9), THE VOTERS' LISTS FINALITY ACT,
1878 (41 Vic. c. 21), THE VOTERS' LISTS AMENDMENT ACT, 1879
(42 Vic. c. 3), THE VOTERS' LISTS AMENDMENT ACT, 1885
(48 Vic. c. 3), THE FRANCHISE CLAUSES OF THE ELECTION
ACT (R.S.O. c. 10), AMENDED BY THE FRANCHISE
AND REPRESENTATION ACT, 1885
(48 Vic. c. 2).*

WITH AN APPENDIX,

CONTAINING THE OPINIONS OF THE JUDGES OF THE COURT OF
APPEAL ON CASES UNDER THE VOTERS' LISTS ACTS;
AND A SCHEDULE OF FORMS.

BY
THOMAS HODGINS, Q.C.,
Editor of "Hodgins' Election Cases," "Canadian Franchise Act," etc.

SECOND EDITION.

TORONTO:
CARSWELL & CO., LAW PUBLISHERS.
1886.

Entered according to Act of Parliament of Canada, in the year 1886, by THOMAS
HODGINS, in the office of the Minister of Agriculture.

PRINTED BY
MOORE & CO., LAW PRINTERS,
20 ADELAIDE ST. EAST,
TORONTO.

P R E F A C E .

THE recent changes in the Franchise laws of Ontario, —by which the right of suffrage for Legislative Elections has been extended to nearly all male persons of full age,—have rendered necessary the publication of a second edition of the Editor's "Manual on Voters' Lists."

But while the Franchise for Legislative Elections has been gradually approaching "Manhood Suffrage," the Municipal Franchise has remained at the qualifications fixed in 1873 (36 Vic. cap. 48), supplemented by the addition, in 1874, of Income Voters (37 Vic. cap. 9); in 1877, of Farmers' Sons (40 Vic. cap. 9); and in 1884, of Widows and unmarried Women (47 Vic. cap. 32).

The titles of the Voters for Legislative and Municipal Elections, are not uniform, as may be seen by an examination of the table on p. 8. And the statutory directions given to Municipal Clerks in preparing the Voters' Lists have been framed more in harmony with the rules governing the Legislative, rather than the Municipal, Franchise. (See notes pp. 10-15.)

The registration of Voters for Legislative and Municipal Elections being required to be incorporated in the one Voters' List, the notes appended to this Edition have been written with the view of assisting Municipal Clerks and others engaged in the revision of Voters' Lists, in the labor of harmonizing the divergent titles and qualifications prescribed for each Franchise.

T. H.

CONTENTS.

	PAGE.
PREFACE - - - - -	iii.
TABLE OF CASES - - - - -	v.
PRACTICAL SUGGESTIONS FOR THE REVISION OF VOTERS' LISTS -	xv.
THE VOTERS' LISTS ACT, R. S. O. CAP. 9, (WITH AMENDMENTS)	1
THE VOTERS' LISTS FINALITY ACT, 41 VIC. CAP. 21. - - -	101
THE VOTERS' LISTS AMENDMENT ACT, 1879, 42 VIC. CAP. 3 -	127
THE VOTERS' LISTS AMENDMENT ACT, 1885, 48 VIC. CAP. 3 -	134
THE ELECTION ACT, R. S. O. CAP. 10, SECTIONS 1-7, AS AMENDED BY THE FRANCHISE AND REPRESENTATION ACT, 1885, 48 VIC. CAP. 2 - - - - -	141
OPINIONS OF THE JUDGES OF APPEAL ON CASES SUBMITTED BY COUNTY JUDGES UNDER THE VOTERS' LISTS ACTS -	218
SCHEDULE OF FORMS - - - - -	237
INDEX - - - - -	253

TABLE OF CASES.

A.

Acland v. Jarvis	160
Acorn (The)	196
Adams v. Loomis.....	151
Alexander v. Newman ..91,	93
Allan v. Waterhouse	26
Allen v. House	81
Allentown	209
Amy v. Supervisors ..3, 24,	89
Ancketill v. Baylis	173
Andrew, <i>Re</i>	82
Anelay v. Lewis	156
Anon. (1 Ch. R.)	115
Anon. (1 Salk.)	6
Archibold's Criminal Prac- tice	181
Ardagh on Voters' Lists Act	124
Atkinson v. Collard	208, 213

B.

Bacon's Abridgement	3
Baillie v. Dickson.....	57
Baines, <i>Re</i>	100
Ballard v. Robins.....	128
Bampde v. Johnston	176
Bandon (Earl of) v. Becher.	120
Bank of Toronto v. Fanning.	166
" United States v. Dandridge	79
Barber v. Wood.....	53
Barclay v. Parrott	128
Barnes v. Williams	53
Barrow v. Wadkin	194
Baxter v. Newman	160
Bayley v. Nantwich	26, 56

Beal v. Ford	200
Beauchamp (Earl) v. Madres- field	193
Beaver v. Watson.....	202
Bedford	186
Bedfordshire (Bonfield's Case)	155
" (Brasier's ")	149
" (Conquest's ")	149
" (Joyce's Case)	149
"	158, 174
" (Southwell's ")	153, 149
Beenlen v. Hockin	46
Bennett v. Brumfitt.....	47
Benwell, <i>Ex parte</i>	209
Beswick v. Ashworth	93
Beverley's Case.....	198
Bewdley	38, 72, 104, 105
" (Evans' Case)	179
" (Edmonds' ")	179
Birks v. Allison.....	17
Bishop v. Helps	26, 56
Blackstone's Commentaries.	189
Blain v. Pilkington	57
Blantyre v. Clyde.....	114
Bollen v. Southall.....	75
Bond v. St. George	15, 178
Boon v. Howard	181
Boustead v. Whitmore	151
Bradlaugh v. Clarke.....	94
Bradley v. Baylis	172
Brecon.....	78
Brewer v. McGowen.....	206
Bright's Husband and Wife.	147, 154
Brightly on Elections..	196, 214
British & Am. Tel. Co. v. Colson	26

PAGE.
iii.

v.

xv.

1

101

127

134

141

218

237

253

Brockville	18, 21, 166	Chorlton v. Lings	11, 102, 188, 189
" (Bacon's Case)....	196	"	197
" (Caldwell's ")....	167	Churchill v. Crease	183
" (Dunham's ")....	170	Cirencester	182
" (Francis' ")....	167	Clark v. Bury St. Edmunds	81, 169
" (Gilroy's ")....	168, 205	" v. Fuller	44
" (Healey's ")....	197	Coates v. Lisle	189
" (Johnson's ")....	168	Coke upon Littleton	79, 144, 147
" (Leslie's ")....	150, 168	"	148, 153, 205, 206
" (McArthur's Case)....	203	Coke's Institutes	15, 188, 197
" (Whaley's ")....	168	Colchester (Jeffrey's Case) ..	198
" (Wiltse's ")....	168	Collier v. King	81, 160
Broom's Constitutional Law	192	Collingwood v. Pace	193
Broom's Legal Maxims ..	79, 86	Colvill v. Lewis	43
Brough on Elections	161	Committee on Parly. & Mun.	
Brown v. Grand Trunk R.		Elections	72, 95
W. Co.	202	Converse v. Michie	59
" v. Ingram	11, 188	Cook v. Humber	172
Browning, Re	xvii	Cooley's Constitutional Law ..	195
Brumfitt v. Bremner	61	Cork	50
Buckland, Re	73	Coulter and Smith, Re	151
Bulmer v. Norris	160	" <i>Re</i>	93
Burge's Colonial & Foreign		Coventry	103
Laws	161, 165	Cowburn v. Wearing	75
Burroughs on Taxation	210	Cox's Ancient Parly. Elec-	
Burton v. Brooks	155, 159	tions	143
" v. Langham	203	Cox and Grady on Elections ..	72
Butler v. Butler	152	"	176
Byrne's Case	36	Cox v. Morgan	44
C.		Crooks, Re	59
Callington	76	Croucher v. Brown	81
Callis on Sewers	190	Crusoe d. dem. Blencowe v.	
Calvin's Case	193	Bugby	170
Cambridge (Lyon's Case) ..	178	Curtis v. March	59
Camidge v. Allenby	45	Cuthbertson v. Butterworth ..	173
Canada Gazette	195	D.	
Carroll v. Beggs	34	Dale v. Huron and Bruce ..	64
" v. Foulkes	43	Daniel v. Camplin	17
Catharine v. Surrey	189	Darley v. Darley	149
Chambers on Elections	105, 150, 154	Dashwood v. Ayles	75
Chapman v. Hall	192	Davidson v. Ross	163
Chase v. Miller	15, 176, 199	Davies v. Hopkins	47
Chatillon v. Canada Mutual		" v. McKeeby	67
Fire Ins. Co	201	Davis on Registration	169
Cheltenham	103	" v. Waddington	155
Chitty's Archbold's Prac-		Dean v. Green	100
tice	44, 53	DeGeer v. Stone	195

TABLE OF CASES.

vii

88, 189	Dias v. DeLivera	147
197	Dingman v. Austin	151
.. 183	Dipsdale's Case	207
.. 182	Disney's Case.....	55
81, 169	Dixon v. Olmius	149
.. 44	Dobson v. Jones.....	203
.. 189	Doe d. Watson v. Jefferson..	44
44, 147	" Fitzgerald v. Finn	161
05, 206	" Hay v. Hunt	194
88, 197	" Patterson v. Davis	194
).. 198	" v. Sutton.....	30
81, 160	" v. Thompson	54
.. 193	Donegani v. Donegani.....	193
.. 43	Donnelly v. Donnelly	152, 170
un.	Dormer v. Fortescue.....	166
72, 95	Down	187
.. 59	Drake q. t. v. Preston.....	97
.. 172	Druitt, Re	199
w. 195	Dublin (Hyland's Case) ...	171
.. 50	Dufferin	38
.. 151	Duigenan's Case	165
.. 93	Dunlop v. Higgins	26
.. 103	Durant v. Carter	207
.. 75	Durham	78
ec-	Dwarris on Statutes.....	116
.. 143		
ns. 72		
176	E.	
.. 44	East Nissouri v. Horseman..	81
.. 59	Ebsworth v. Fraser	16
.. 81	Ekersley v. Barker	16
v.	Elliott on Electors.	148, 198, 199
.. 170	Ellis v. Thompson	30, 45
.. 59	Emes v. Barber.....	91
ch. 173	Evans & Fynche's Case ...	173
	" v. Jones	86
	Evesham.....	187
.. 64	F.	
.. 17	Ferrar's Case.....	169
.. 149	Fields v. Adams	195
.. 75	Fitch v. Weber	194
.. 163	Fleming v. Hill.....	169
.. 47	Flounders v. Donner.....	16
.. 67	Forbes v. Cochrane	193
.. 169	Force v. Floud	48
.. 155	Ford v. Boon	74
.. 100		
.. 195		
	Ford v. Drow	208
	" v. Hart	208
	" v. Pye	207
	Foster, Re	93
	Fowke v. Draycott	148
	Fowle v. Trevor.....	204
	Fox v. Dalby	203
	Freeman v. Gainsford.....	160
	" v. Newman	47
	G.	
	Gadsby v. Warburton	17
	Garnett v. Bradley	81
	Gibson v. Michael's Bay Lumber Co.....	44
	Gilchrist v. Ramsey	155
	Gillies, Re	169
	Giraud, Re	195
	Gloucester	158, 174
	" (2 O'M. & H.)....	187
	Gloucestershire	154, 156
	Goderich Voters' List, Re ..	28, 51, 86
	Godsell v. Innous	46
	Goldie v. Taylor	146
	Gorman, Re.....	169
	Grace v. Clinch.....	86
	" v. Eddy	74
	Grant v. Pagham	38
	Gray v. Pearson	77
	Great Grimsby	198
	Great Marlow	177
	Greaves v. Ashlin.....	30
	" v. Tosfield	163
	Grenville v. College of Physi- cians.....	68
	Griffin v. Rising.....	96
	Groenvelt v. Burwell	68
	Grover v. Bontems	50
	Guyer v. Smith.....	193
	H.	
	Hadfield's Case	165
	Hall v. Brush.....	43
	Halton (1844).....	189
	Halton (1875).....	101

Harper v. Charlesworth	161
Harris' Case	26
Harrison's Municipal Ma- nual	99
Harrison v. Williams	116
Harrop v. Hirst	87
Hartley v. Hurl	149
Hathaway v. Cumming	201
Haydon v. Crawford	174
Heelis v. Blain	165
Henderson v. McLean	161
" v. Weis	147
Henrette v. Booth	172
Herbert v. Ashburner	116
Hereford	103
Heydon v. Tiverton	160
Heywood on Elections	
143, 154, 188, 190, 192, ..	198
Hickton v. Autrobus	45
Hinton v. Hinton	34
Hodge v. Regina	97
Hoy's Case	55
Holroyd v. Marshall	156
Holt v. Lyle	189
Hopkins v. Provincial Ins. Co	201
Horton v. Stamford	75
" v. Leeds	208
Howitt v. Stephens	74
Hoyland v. Bremner	93
Huckle v. Piper	
Huddersfield	187
Hudson on Elections	
11, 142, 145, 188, ..	198
Hughes v. Budd	44
" v. Chatham	175, 202
" v. Griffith	44
" v. Marshall	198
Hunt v. Hibbs	9, 30, 85

L.

Ipswich 187

J.

Jackson v. Young	112
Jarman's Conveyancing	149
Jeffrey v. Kitchener.....	207
Jenkins v. Martin.....	162

Jennings v. Robertson.....	155
Johnston v. Flood.....	205
" v. Provincial Ins.	
Co.....	26
Jones v. Jones	17, 46, 78
Judson v. Luskett.....	17

K.

Kamouraska Electoral Lists	84
	205
Kearns v. Cordwainers Co..	87
Kelynge	183
Kerr v. Stripp	152
King v. Burrell ... 3, 89, 90,	91
" v. King	155
Kingston's Case (Duchess of)	129
Kirton v. Dear	160

L.

Laird v. Briggs	4
Langlois v. Baby	91
Laughtonborough v. McLean	4
Lawless v. Sullivan	210
Leather Cloth Company v. American Leather Cloth Company	44
Lee v. Priaux.....	149
Lees and Judge of Carlton, <i>Re</i>	53
Lely & Foulkes on Elections.	181
Lester v. Garland.....	59
Levy v. Lindo	155
“ v. Moylan	53
Lewis v. Evans	56
“ v. Toronto	80
Leyman v. Lattimer	198
Lichfield v. Simpson.....	89
“ (Stringer’s Case) ..	150
Lincoln (2 A. R.) 5, 9, 17, 36, 37, 84, 85, 105, 111	111
Lincoln (2) (Andrews’ Case).	195
“ (Clark’s “).	158
“ (Johnson’s “).	174
“ (Mulrennan’s “).	197
“ (Shenck’s “).	194
“ (Shenck’s “).	197

TABLE OF CASES.

ix

155	Liverpool v. Wright.....	124
205	Llandebig v. Llandyfyrdog..	86
	L'Original Voters' Lists, <i>Re.</i>	28
26		31, 58, 60, 68
78	Luckett v. Bright.....	206
17	" v. Knowles.....	17
	Ludlam v. Ludlam.....	193
	Lynch v. Clarke.....	193

M.

84		
205	Male on Elections.....	198
87	March, <i>Re</i>	151
183	Marcotte v. Paquin	9
152	Marshall v. Bown.....	93
91	Mather v. Allandale. 24, 25,	128
155	Maunsell v. Ainsworth	53
129	Maxwell on Statutes. 80, 82,	137
160	May v. May	94
	Merrick v. Sherwood....	151, 163
	Mesure v. Britten.....	43
	Meyler v. Metcalfe	206
	Middlesex (<i>Anstey's Case</i>)..	206
		159, 173
4	" (<i>Barbre's</i> ")..	196
91	" (<i>Chase's</i> ")..	145
4	" (<i>Rice's</i> ")..	159
210	" (<i>Smith's</i> ")..	159

Midland R. Co. v. Ambergate R. Co.	102
Milbourn Port	75
Mittleberger v. Whitehead..	46
Monck	64, 121
Monmouth	187
Montgomery v. Graham....	194
Montreal Centre	78
Moore's Case	37
Moore v. Carisbrooke	156
Moorehouse v. Linney.....	34
Morgan v. Parry	28, 63
Morse on Citizenship	215
Morris v. Richards	43
Mulhern v. Fortune.....	170
Munro v. Merchant	193
Murray v. Thorniley	165

Mc.

McCann v. Waterloo Fire
Ins. Co. 26

McCrary on Elections 197
McCulloch and Judge of
 Leeds and Grenville 48, 67,
 74, 90, 162, 167
McDougall v. McMillan 201
McIntyre v. McIntyre..... 171
McKinnon v. Proud..... 43
McLaughlin's Case 171
McLean v. Pinkerton 43
McNab v. McFarlane 174
McNiffe v. Tiernan 47

N.

Nazer v. Wade	86
Neale, <i>Re</i>	199
Nettleton v. Burrell	76
New-Windsor.....	186
Newton v. Crowley	94
“ v. Hargreaves.....	94
“ v. Harland	54
“ v. Moberly	94
Nicholls v. Bulwer	75
“ v. Cumming 36, 50, 80,	84
Nickle v. Douglas	85
Nicolson on Elections .188,	198
Nokes v. Gibbon	81
Nolan v. Fox	147
Northallerton	177, 178
North Victoria.....	2, 18, 22
Norris v. Pilcher	132
Norwich	108
Noseworthy v. Buckland. 57,	132

0.

Oberlin v. McGregor	174
Oldham (Baxter's Case)....	179
“ (Brown's “)....	34
“ (Harper's “)....	58
“ (Horsfall's “)....	34
“ (Ogden's “)....	62
Olive v. Ingram.....	164, 189
O'Loughlin, <i>Ea parte</i>	65
Onions v. Bowlder	45
Onslow v. Bailiff of Hasle- more.....	92

Opinions on Voters' Lists

Acts 39, 75, 83, 113, 129,	
130, 168, 169,	218
Orme's Case	166
Orme on Elections	198
Osborne v. Bank of United	
States	79
O'Shea v. Meara	166

P.

Page v. Carew	54
Palgrave's Parliamentary	
Writs	142
Park v. Humphrey	175
Parker v. Campion	203
Parsons and Toms, <i>Re</i> 32, 67,	68
Partridge v. Wellbank	75
Passingham v. Pitty	81
Pater, <i>Re</i>	52
Pearce v. Morrice	111
People v. Allen	111
" v. Cook	112
" v. Pacific Ins. Co.	116
" v. Pease (<i>Rivinet's</i>	
<i>Case</i>)	196
Peterboro v. Hatton	124
Peterson v. Balfour	55
Petition of Minister of Edu-	
cation, <i>Re</i>	119
Pharmaceutical Society v.	
London &c., Supply As-	
sociation	77
Philpot v. Hunter	120
Phillipotts v. Phillipotts ..	92
Points v. Attwood	45
Pollard, <i>Re</i>	52
Powell v. Bradley	40, 234
" v. Guest	209, 230
Prescott	18, 25, 150, 163, 196
Prince Edward	64
Pring v. Escount	76
Pritchard v. Ames	149
Proudfoot v. Barnes	76
Pryce v. Belchers	87
Prynn's <i>Brevia Parliamen-</i>	
<i>taria</i>	142, 190
Putnam v. Johnson	214

R.

Rawlins v. West Derby 43, 44, 50	
Reading (<i>Barthe's Case</i>)	196
Reardon's Case	206
Reg. ex rel. Bartliffe v.	
O'Reilly	77
" Carroll v. Beck-	
with	66, 196
" Chambers v. Alli-	
son	22, 34, 74
" Cheyne v. Tilt ..	157
" Crozier v. Taylor ..	82
" Davis v. Wilson ..	82
" Dundas v. Niles ..	5
" Ford v. Cotting-	
ham	22, 74
" Forward v. Bar-	
tels	172
" Felitz v. Howland ..	152
" Lackford v. Friz-	
zell	162
" Lutz v. Hopkins ..	60
" McVean v. Gra-	
ham	194
" Rollo v. Beard ..	82
" Stock v. Davis ..	159
" Telfer v. Allan ..	45
" White v. Roach ..	45
Regina v. Brightelmstone...	177
" v. Brighton	208
" v. Cornwall Court of	
Revision	21, 50, 51
" v. Derbyshire	116
" v. Gamble & Boulton ..	199
" v. Glamorganshire ..	68
" v. Hagar	169
" v. Harrald	11, 191
" v. Hartlepool	48
" v. Holbeck	209
" v. Lefroy	52
" v. Lichfield	4
" v. Middlesex (Justices)	43
" v. Norwood	15, 176
" v. Pearce	102
" v. Poor Law Com-	
missioners	43
" v. Pott & Shrigley ..	209
" v. Robinson	30

xi

Rogers on Elections..	29, 49,
70, 92, 145, 148, 150, 154,	
155, 156, 166, 174, 182,	
183, 198, 205.	213
Rogers v. Rajendro Dutt ..	87
“ v. Harvey	206
Royal Canadian Bank v.	
Mitchell	162

20.

Salter v. Hughes	192
Sanders' Justinian	191
Sangster v. Noys	43
Savage v. Deacon	185
Scarborough v. Borman....	148
Score v. Huggett	172
Scott v. Metcalf	173
Selden's Works	191
Seton v. Slade	155
Shaftesbury	49
Shannon v. Hastings Mut. Ins. Co.....	26
Sharpe v. De St. Sauveur ..	194
Shedden v. Patrick	193
Sheffield v. Bennett	137
Sherwin v. Whyman	75
Simeon on Elections	143
Simpson and the Judge of Lanark, <i>Re</i>	46, 48
Simpson v. Hartman	202
" v. Scottish Union Co.....	66, 115
" v. Wilkinson.....	155
Sims v. Doughty	173
Sinclair's Division Courts Acts	54, 82
Smartle v. Penhallow	161
Smith, <i>Ex parte</i>	201
" v. Clay	45
" v. Huggett	26, 45
" v. Holloway	48, 58
" v. James	32
" v. Lancaster	137
Sone v. Ashton	153
Southampton	187
South Grenville	162
" (Fitzgerald's Case)....	205
" (Holden's .. Case)....	158

South Grenville (Jones' Case) 145	Taylor on Evidence..... 36
" (Lundy's ") 158	Taylor v. Phillips 43
" (Morrow's ") 158	" v. St. Mary Abbott 15, 177
" (Mullen's ") 158	Theobald v. Duffoy 147
" (Noblin's ") 169	Thompson v. Ingham 67
" (Stewart's ") 205	Thorniley v. Aspland..... 93
South Huron 38	Tildesley v. Harper 75
South Wentworth, 61, 101, 106, 109	Toder v. Sansam 6
Spence's Origin of Laws.... 191	Tonis v. Cuming 46
Spencer v. Harrison ... 104, 159	" v. Luckett 172
Spratt v. Spratt..... 195	Townsend v. Marylebone ... 74
Stamper v. Sunderland ... 172	Trotter v. Walker..... 47
" v. St. Ives. 103	" v. Watson..... 159
Stark v. Chesapeake..... 195	Tullett v. Armstrong. 148
Startup v. Macdonald 30	Tully v. Farrell..... 190
State v. McLean 112	Tyrrell v. Hope 149
" v. Newark..... 68	
" v. Daniels 24, 90	U.
St. Dunstan Charity Schools <i>Re</i> 81	United States v. Anthony .. 188
St. Pancras v. Battenbury .. 63	" " v. Elm..... 215
Stephens on Elections 46, 71	United Trust Co. v. U. S.
91, 92, 145, 146, 148, 149, 165	Fire Ins. Co..... 112
Sterling v. Fredericton 210	
Stockport 78	V.
Stone v. Yeovil ... 4	
Stormont 37, 101, 162, 167	Vance's Case 159
" (Blair's Case) 157, 173	Vattel's Law of Nations 161, 193
" (Braydon's Case) .. 157	Viner's Abridgment 161, 190, 193
" (Bullock's ") .. 167	
" (Cahey's ") .. 157	W.
" (Eamon's ") .. 168	
" (Gollinger's ") .. 157	Wadmore v. Dear ... 160
" (Gore's ") .. 168	Wadsworth v. Marshall 53
" (Hill's ") .. 171	Walker v. Payne 213
" (Place's ") 157, 194	Wallingham 103
" (Raney's ") .. 168	Wallis v. Birks 159
" (Rupert's ") .. 171	Wansey v. Perkins 173
" (Weort's ") .. 158	Warren on Elections... 193, 206
Story on the Constitution... 119	Watson v. Black 160
Story's Equity Jurisprudence 145	" v. Eales..... 59
Stuart v. Baldwin..... 166	" v. Pitt 46
Swift v. Jewsbury..... 83	Watts, <i>Re</i> 68
Symonds v. Hallett.... 149, 152	Weaver v. Burgess 147
T.	
Tanner v. Carter..... 208, 214	
Tapping on Mandamus..... 115	
Tarr v. McGahey..... 24, 90	

TABLE OF CASES.

xiii

..... 36	Weldon v. De Bathe..... 152	Wilson v. Salford.....11, 188
..... 43	Wellington v. Whitechurch .. 209	Wood v. Chapin 112
ott 15, 177	Wendover (Bening's Case) .. 198	" v. Hopper 19, 202
..... 147	West on Peers..... 191	" v. Willisdén..... 17, 128
..... 67	West Elgin 2, 22	Woodward v. Sarsons....85, 100
..... 93	" Toronto..... 44	Workman v. Robb 175
..... 75	Westcombe's Case..... 207	Wright's Tenures.. 191
..... 6	Whithorn v. Thomas 178	Wright v. Mills 59
..... 46	Wigan (Jump's Case)..... 204	" v. Stockport..... 172
..... 172	" (Lyon's ")..... 198	
ne ... 74	" (Nathan's ")..... 179	
..... 47	Wildes v. Russell 4	Y.
..... 159	Wilkinson v. Britton 44	York (U. C.) 1829..... 198
..... 148	Williams v. East India Co.. 36	Yorkshire 159
..... 190	" v. Whiting 201	
..... 149	Wilson v. Marryatt 195	

ay .. 188
 215
 J. S.
 112

.... 159
 161, 193
 190, 193

.... 160
 53
 213
 103
 159
 173
 193, 206
 160
 59
 46
 68
 147

R

I

for

is e

good

the

a co

to w

und

In

"the

that

neer

elect

taken

mun

pract

offer

Asse

1

the

the

the

page

2.

ascert

additi

Fir

ably i

(a)

PRACTICAL SUGGESTIONS FOR THE REVISION OF VOTERS' LISTS.

In an English work of some repute (a) it is recommended that for the work of the Revision of the Voters' Lists, "a Central Manager is essential. The one selected should be active, intelligent, and of good standing; and to him it is the most prudent course to confide the entire business of revision, without the needless incumbrance of a committee. To each polling district an agent should be appointed, to whom the entire business of that district should be committed, under the direction of the Manager."

In this country we are more favorably inclined to make use of "the needless incumbrance of Committees;" as experience has proved that, when efficient, they are excellent workers and experienced engineers in practically moving and regulating the mechanics of an election contest. In many constituencies, the central organization takes the shape of a political association, with local branches in each municipality. To enable such committees or associations to deal practically with the Voters' Lists, the following suggestions are offered for the revision of the lists for elections to the Legislative Assembly:—

PROCEEDINGS FOR THE REVISION OF THE LIST.

1. Let several copies of the Voters' List be procured; and also a blank book of about the same size, or larger, for each polling sub-division. Cut out the pages belonging to each sub-division, and paste them into the book on each left-hand page, leaving the right-hand page for memoranda or observations.

2. With this list, carefully examine the Assessment Roll, and ascertain and note on the right hand page of the Voters' List, the additions and omissions suggested by such examination:—

First. Whether the Christian and surnames of those persons favorably inclined, and of those who are doubtful, are correctly entered

(a) Cox and Grady's *Law of Registration and Elections*, lxxv.

and spelled ; and whether the number of the lot, and concession, or other local description of the property is correctly given. This should be attended to carefully, otherwise there may be a loss of votes, as a person desiring to vote may hesitate and have difficulty in swearing, at the poll, that he is the person intended to be named in the list. The qualification under which each person claims to vote, should appear opposite his name, for the purpose of identification. Thus (1) if owner, tenant, or occupant, of real estate then it should state the fact, and describe by number or other proper designation the particular property ; (2) if qualified in respect of income or wage-earner, then the proper franchise title, and the place of residence in the Municipality, of the voter ; (3) if qualified as a landholder's son, then as such in respect of the particular farm or other property by the number of the lot or other known designation ; (4) where a voter has the requisite qualification in more than one polling sub-division his name should appear on the Voters' List for the sub-division in which he resides or is qualified. Remember that under the New Franchise Act persons can only vote in the Electoral District in which they reside.

Second. Ascertain what is the date of "the final revision and correction of the Assessment Roll," referred to on page 22, note (e).

Third. Ascertain what persons named in the list and Assessment Roll, come within the classes of cases mentioned in the notes on pages 34 and 38.

Fourth. Ascertain what persons in the list will be of the age of 21 years, at any time within 60 days from the final revision and correction of the Assessment Roll. See notes (g) page 6, and (j) page 40.

Fifth. Ascertain what persons, although duly qualified and entitled to vote, have been improperly omitted from the list. See notes pages 33, 34, 37, 39, 40, 112, 135.

Sixth. If a voter has more than one qualification ; for example, if he be entitled to vote in respect of real property and is also rated in respect of income, see that he is entered on the list for both in case he should lose one of the qualifications before the election. See p. 235.

In determining who are, and who are not, entitled to vote, the Assessment Roll is not conclusive as to the value of property, or the amount of income ; but evidence may be given before the County Judge to show the real value of the property, or the actual amount of the income or earnings. See pages 35, 36.

Let the examination be conducted methodically : examine *first* the names of the persons entered on the list, and consider all questions affecting them as voters : *second*, the property assessed, and its value, and the right to vote of any other persons interested in that property, as joint owners, tenants, occupants, or landholders' sons ; also as to income and wage-earner voters : *third*, see that the franchise titles of the various owners, tenants, occupants, landholders' sons, and income and wage earner voters, are correctly entered on the list.

3. After having carefully examined the list, if it appears that corrections should be made, or that the names of certain persons should be struck off, or added ; carefully prepare your lists of complaints, in the forms given in the schedule on page 241 ; and let them be signed *at the foot* of the notice by some person whose right to be a voter cannot be questioned (see page 46).

Where a person's right to property has been acquired between the making and the final revision of the Assessment Roll, the right of appeal belongs exclusively to the transferee of such property. See pages 39, 218, 222 and 227.

These lists of complaints *must* be given to the Clerk of the Municipality, or left for him at his residence, or place of business, *within thirty days after the Clerk has posted up the Voters' List in his office*. See pages 44 and 45.

If the office of Clerk be vacant, then give the notice to, or leave it for, the head of the Council of the Municipality, *i. e.*, the Mayor or Reeve at his residence or place of business. See pages 45 and 48.

A notice given after that date is of no avail : *Re Browning*, 43 Q. B. 13.

No fees are to be paid.

The Judge of the County Court will then appoint a day for hearing the complaints.

When you have given the notice, as mentioned above, devote your attention to investigating the evidence to support the alterations and additions which you consider should be made. This should receive immediate attention ; and each committee-man's work should be properly defined for him, and promptly attended to, and should not be left to the last moment.

If the persons whom you desire to give evidence before the Judge on the day appointed, refuse to attend ; or if you think that they will not attend to give evidence, unless compelled so to do, obtain a subpoena or order from the County Court, as mentioned on page

51, and have the proper number of copies made and examined by the party who is to serve them. Then have a copy served on each person whose attendance is required. Any number of names may be included in the subpoena or order (page 58). By the subpoena or order, the persons named in it may be compelled to produce such papers and documents as you may think necessary (page 53). Each person served with a subpoena (with the exceptions mentioned hereafter) will be entitled to his witness fees according to the Division Court rates, which are as follows : 75 cents a day for attendance at Court, and 10 cents per mile travelling expenses, or railway fare actually paid.

You need not, however, pay the fees if the person served is a person complaining of the lists, or is a person in respect of the insertion or omission of whose name upon the list the complaint is made, provided he be resident within the municipality the list of which is the subject of complaint, or within the municipality in which the Court is held. See page 54.

Before the day appointed by the County Judge, arrange the order in which you will call your witnesses, and note what you expect each witness to prove.

"Arrangement and order" are essential to success as well as to expeditious despatch of business.

On the day appointed for hearing the complaints, attend the Court with your evidence fully prepared. You should also be ready to prove the service of your subpoena, or order, (by the party who has served it) with a view to having the hearing adjourned, or the voter struck off, should the witness disobey the subpoena. See pages 52-58.

If any appellant or complainant, entitled to appeal, dies, or abandons his appeal or complaint, or having been on the alphabetical list made and posted by the Clerk, is afterwards found not entitled to be an appellant, the Judge may, if he thinks proper, allow any other person who might have been an appellant, or complainant, to intervene and prosecute such appeal or complaint upon such terms as the Judge may think just. See page 74. The County Judge has also ample power to amend all notices and other proceedings as he may think proper; and notices should be amended so as to prevent voters from being disfranchised. See pages 73-75, 127, 129, 222, 226, and 231.

"FINAL REVISION OF THE ASSESSMENT ROLL."

The date of the final revision of the Assessment Roll may be ascertained from the following rules.

1st. In cities, towns, townships and villages, when no by-law has been passed, altering the statutory dates for making the assessment: (a) *If there were no appeals to the Court of Revision*—on the day the Court finally passed the roll as certified by the Clerk. (b) *If there were Appeals to the Court of Revision, but no Appeals to the County Judge*,—on the 6th day of July. (c) *If there were Appeals to the County Judge, from decisions of the Court of Revision*—on the day the County Judge finally decided such appeals,—which must be before the 1st August.

2nd. If the County Council has passed a by-law for taking the assessment in towns, townships and villages between the 1st day of February and the 1st day of July in each year, the above dates will not apply.

3rd. In cities and separated towns (where a by-law has been passed altering the statutory dates): (a) *If there were no appeals to the Court of Revision*—on the day the Court finally passed the roll as certified by the Clerk. (b) *If there were Appeals to the Court of Revision but no Appeals to the County Judge*—on the 21st November. (c) *If there were Appeals to the County Judge*—on the day the County Judge finally decided such Appeals,—which must be before the 31st December. See page 22.

PERSONS WHO ARE QUALIFIED TO VOTE.

(1.) *Owners*.—Every person who at the date of the final revision of the Assessment Roll owns property of the value mentioned in the Act, in his own right, or "in right of his wife," for an estate for life, or any greater estate (*either legal or equitable*.)

(2.) *Tenants*.—Every person who at the date aforesaid is the tenant of property of the assessed value mentioned in the Act.

Where the property is assessed at the statutory amount, and is rented, both owner and tenant have the right to vote in respect of such property.

(3.) *Occupants*.—Every person who, although he is not the owner or tenant, is yet the occupant of property of the value mentioned in the Act, and as such is in possession of it and enjoying the revenues and profits for his own use.

(4.) *Householders*.—Every person who is the sole tenant and occupant of a dwelling house or part of a house separately occupied and resided in, and who is not a joint tenant or occupant, or mere lodger or boarder in a house.

(5.) *Landholders' Sons*.—By which is meant every young man of 21

years of age and upwards, who, though not otherwise qualified to vote, has for 12 months prior to the return of the Assessment Roll by the assessor, resided with and on the real property owned or rented by his father, or step-father or mother, etc. This franchise is given to the sons of owners or tenants who are actual occupants. The definition of "landholder" is given on page 175, and does not include "occupant." In determining the right of persons to vote as "landholders' sons" the question of the value of the real property is of importance only where it is less than 20 acres. It must be assessed in cities and towns at \$400, and townships and villages at \$200. When the property is so assessed, the father and all the sons, step-sons, sons-in-law, etc., resident and domiciled with him should be entered on the Voters' List.

All such persons, referred to in the above paragraphs, should be entered on the last revised and corrected Assessment Roll; but if not so entered, application should be made to the Judge for an order under section 22 of *The Voters' Lists Act*, to have them entered on a Supplementary Assessment Roll. See pages 35, 37, and 83.

(6.) *Income and Wage-earner Voters.*—Every person who has continuously resided in the municipality since the completion of the last revised Assessment Roll, and who, at the date of such completion, and for 12 months previously, was in receipt of an income of not less than \$250 per annum. The names of such persons should be entered upon the Assessment Roll. See pages 37, 40, 135, 218, and 235.

PERSONS WHO ARE NOT QUALIFIED TO VOTE.

The following persons are not entitled to vote, although they may be entered on the Assessment Roll for the requisite amount of property, or be in receipt of a sufficient income; and they may be struck off the Voters' List, on complaints duly made to the County Judge:

(1.) *Aliens, i. e.,* Persons not born in any country under the sovereignty of the British Crown, and who have not become naturalized subjects.

(2.) *Minors.*—Persons who are under 21 years of age, or who will not attain that age, within 60 days from the date of final revision and correction of the Assessment Roll.

(3.) *Voters on Real Property.* (a) Persons who have no *bona fide* title or interest in the real property, either by giving up possession (if tenant or occupant), or selling, (if owner), and removing from the assessed property before the date of the final Revision of the Assessment

Roll; or who are not householders as defined in the Act. (b) Trustees of, or agents for, the property assessed. (c) Joint ownership, or joint tenancy, or joint occupancy with some other person, named, or not named, on the Roll or Voters' List, where the real property is not assessed at a sufficient amount to give a qualification to each person interested therein. (d) Persons who have ceased to be owners, tenants or occupants, or householders of such real property, by giving up possession, or selling, *after the final revision of the Assessment Roll*, and who have removed from the Constituency.

(4.) *Voters on Income or Earnings.* (a) Persons not in receipt of a *bona fide* income, or of earnings to the amount of \$250 at, and for the twelve months prior to the date of, the completion of the Assessment Roll. (b) Persons not assessed for income of \$250 or over on the last revised Assessment Roll. (c) Persons not entered as wage-earners on the Assessment Roll. (d) Persons though assessed or entered, who are not residents of the electoral district, or had removed from the constituency at the date of the final revision of the Assessment Roll.

(5.) *Officials.*—Persons disqualified by office, under sec. 4 of the Election Act.

(6.) *Corrupt Practices.*—Persons guilty of corrupt practices at elections for the Legislative Assembly. See pages 56, note (e) and 64, note (j).

(7.) *Landholders' Sons.* (a) Persons may be objected to whose father or mother or stepfather, etc., was not the *owner or tenant and actual occupant* of the real property assessed. (b) That the assessed property is not of sufficient value as defined by the statute. (c) That they do not come within the statutory definition of sons or step-sons, etc., of such landholder. (d) That they have not resided on the assessed real property for twelve months before the date of the assessor's return of the Assessment Roll. (e) That they do not now reside in the constituency.

(8.) Persons who have died, but whose names continue on the Assessment Roll and Voters' List.

ESTIMATED RESULTS OF AN ELECTION.

In preparing for an election, the general results of an approaching contest may be estimated by the answers which can be given to the

three following questions, in each polling sub-division, or local municipality :

1. How many of the voters who supported us at the last election, are dead, or have removed from the constituency ?
 2. How many of the voters who supported us at the last election, are now supporting the other side, or will not vote ?
 3. Of the new voters added to the Voters' List since the last election, which side will the majority of such new voters support, and vote for, at the coming election ?
-

MANUAL ON VOTERS' LISTS.

An Act respecting Voters' Lists (a).

REVISED STATUTES OF ONTARIO, CHAPTER 9.

HER MAJESTY, by and with the advice and Short Title.
consent of the Legislative Assembly of the
Province of Ontario, enacts as follows :—

1. This Act may be cited as “*The Voters’* Interpreta-
tion.
Lists Act” (b).

(a) The Election Act (R. S. O. cap. 10) defines the property and other qualifications essential to the possession and exercise of the electoral franchise, and adds a further requisite,—that of registration on a list of voters. This Act prescribes the procedure by which the names of all those who are entitled to that electoral franchise may be enrolled and registered as duly qualified electors on such lists of voters. In elections under a law which imperatively requires registration as a qualification for voting, if the registration has been denied by the wrongful act of the Registering Officer, it has been held that a voter's only remedy is by an action against the registering officer for damages. Where, however, a portion of the voters of a given district are unjustly deprived of or denied the privilege of registration, and another portion are duly registered and permitted to vote, the entire poll may be rejected if the votes cannot be counted, and are sufficiently numerous to affect the result of the election : *McCrary on Elections*, 13.

(b) The system of providing a list of voters for elections has been in operation in England since the Reform Act (Imp.) of 1832 ; and in Canada since 1858. Prior to those dates electors were required to vote at the polling division nearest the property in respect of which they were qualified

Clerk to
make list of
voters after
revision of
Assess-
ment Roll.

2. [As amended by 48 Vic. cap. 3 (c)]. (1) The

(12 Vic. cap. 27, sec. 13), and the Deputy Returning Officer was required to enter all particulars respecting such electors in the poll book (sec. 20). The first Act providing for the registration of voters, was passed in 1853 (16 Vic. cap. 153). It provided (sec. 5, sub-sec. 2), that the Clerk of each municipality should, after the final revision and correction of the Assessment Rolls, make out a correct alphabetical list of all persons entitled to vote at Parliamentary Elections within the municipality, according to the definitions in that Act, together with the number of the lot or part of a lot, or other description of the real property in respect of which such persons were so qualified. In 1854 the operation of this Act was temporarily suspended (18 Vic. cap. 7); and in 1854 it was repealed (18 Vic. cap. 87). In 1858 another Act was passed (22 Vic. cap. 82), which was amended in 1859 (22 Vic. cap. 10); under which the entries on the Assessment Roll were declared to be final as to the qualifications of electors: *West Elgin*, 9 U. C. L. J. 330. These Acts were consolidated in C. S. C., cap. 6; and were continued in operation until after Confederation by the B. N. A. Act, sec. 51. The Ontario Legislature in 1869 re-enacted the former laws (32 Vic. cap. 21), but repealed the clause making the Assessment Roll final, except as to the value of the property assessed: *North Victoria*, H. E. C. 584. The Voters' Lists Acts of 1874 (37 Vic. cap. 4) of 1876 (39 Vic. cap. 11) and of 1877 (40 Vic. cc. 10, and 12) consolidated in R. S. O. cap. 9, provided for a revision of the voters' lists by a judicial authority, similar to that provided by the Imperial Registration Acts, but did not make such revision final: *Lincoln* (2), H. E. C. 500. In 1877 the Legislative Assembly by a majority of one affirmed the principle of giving finality to such judicial revision (10 Jour. Leg. Assem. Ont. 90); and in 1878 the Voters' Lists Finality Act (41 Vic. cap. 21) was passed. Further amendments were made in 1879 (42 Vic. cap. 3) and in 1885 (48 Vic. cap. 3) which will be found in the subsequent pages of this Manual.

(c) All the amendments to the original Act appear in brackets.

Clerk of each municipality (*d*) shall, immediately after the [first] revision and correction of the as-

(*d*) The Clerk, although an officer of the Municipal Council, has, under this Act, public statutory duties to perform in addition to those required of him as an executive officer of the Council. The statutory duty of preparing a correct list of the qualified voters of his Municipality, requires him to compile a careful and alphabetical register or list of the names of the voters, together with a description of their properties and their assessed values and titles. In the performance of this duty the Clerk is not in any sense the servant or officer of the Municipal Council, but is an officer of the public, having responsible and important duties to perform, the neglect of which will subject him to statutory penalties. And such penalties may be imposed not only for wilful but for inadvertant neglect: *King v. Burrell*, 12 A. & E. 460. Mistake of duty and honest intentions will not excuse the offender: *Amy v. Supervisors*, 1 Wall. 136. The duty of the Clerk under the above section is imperative: "shall immediately after," &c., "make a correct alphabetical list." The word "*shall*" is to be construed as imperative (*Interpretation Act*, R. S. O. cap. 1, sec. 8, sub-sec. 2). This list must be prepared and printed "within thirty [or forty] days after the final revision and correction of the Assessment Roll." The neglect of the Clerk is not to render "null, void or inoperative any of the lists in this Act mentioned" (sec. 23); but in case the Clerk fails to make out and publish the list, the Clerk of the Peace, or any elector, may apply summarily to the County Judge, and the Judge may make such orders as he deems necessary (sec. 24). The Clerk may also be liable to a forfeiture of his office, or to an application for a writ of mandamus. "If an officer acts contrary to the nature and duty of his office, or if he refuses to act at all, in these cases, the office is forfeited:" Bacon's Abr. tit., "*Offices and Officers*," M. "A general neglect or refusal to attend to the duty of such an office is a reason of forfeiture, a determined neglect, a

assessment roll in every year (e) make a correct alpha-

wilful refusal." *Per* Lord Mansfield, C. J., in *Rex v. Corporation of Wells*, 4 Burr. 2004; see also *Wildes v. Russell*, L. R. 1 C. P. 722. The writ of mandamus lies to command a public officer to discharge all the duties belonging, or annexed, to his office: *Rex v. Mayor of Gravesend*, 2 B. & C. 602; notwithstanding that he may be liable to a penalty for neglect: *Rex v. Everet*, Cas. Temp. Hard. 261. Thus where the overseers of one of several parishes in a borough omitted to make out the burgess list, and at the Revision Court of the Mayor, there was no list for the parish in which the name of the claimant appeared, a mandamus was granted: *Regina v. Mayor of Lichfield*, 1 Q. B. 453, s. c. 5 Jur. 889. A registering officer may be required by mandamus to register the names of voters who are properly qualified: *Davis v. McKeeby*, 5 Nev. 369.

(e) The words "first revision" are evidently incorrect, and should read "final revision." By sec. 3 *post*, the list is to be made out within 40 days or 30 days "after the final revision and correction of the Assessment Roll." Besides it is not until *after* the *final revision* it can be said that persons appear by the Assessment Roll to be entitled to vote. Where a word in a statute would make the clause in which it occurs unintelligible, the word may be eliminated, and the clause read without it: *Stone v. Yeovil*, 1 C. P. D. 691. A Judge may take a view that a word in a section is absurd, but that does not conclude that another may be inserted. And a Judge may take a view that there is enough in that and the following sections to enable him to insert the word: *Laird v. Briggs*, 19 Ch. D. 33. The Assessment Roll when completed and finally revised and corrected is the foundation of all proceedings with a view to Legislative and Municipal elections, or Municipal taxation, and all copies and lists ought to correspond with it, for it is the primary or original Roll: *Laughtenborough v. McLean*, 14 C. P. 180. The duties of the several Municipal officers in preparing and finally revising the roll are prescribed by R. S. O. cap. 180 as follows:

betical list (f) in three parts (Form 1) of all *per- [“Male”
struck out.]

(1) The assessor “shall begin to make his roll not later than the 15th February, and shall, before completion, serve a notice on every party assessed, and shall complete his roll before the 30th April” (sec. 42); and “on or before the 1st May shall deliver to the Clerk such Assessment Roll completed and added up” (sec. 43). (2) Notice of appeal by any party complaining of assessments shall be given before the 15th May, or within fourteen days after the return of the roll in case the same is not returned within the statutory time (sec. 56, sub-sec. 2). (3) The Court of Revision may meet after the 26th May (sec. 52), and shall complete its final revision of the roll before the 1st of July (sec. 56, sub-sec. 19). (4) Notice of appeal to the County Judge, from the decision of the Court of Revision, shall be given before the 6th July (sec. 59, sub-sec. 2). (5) The County Judge shall determine all appeals before the 1st August. If cities and separate towns pass by-laws under sec. 44, then the assessment is to be made between the 1st July and the 30th September, and the roll is to be returned by the 1st October. The Court of Revision is to close its sittings on the 15th November, and the County Judge is to determine all appeals by the 31st December. County Councils may pass by-laws for taking the assessment between the 1st February and the 1st July, and the dates will then be regulated by such by-laws. See R. S. O. cap. 180, sec. 46.

(f) The object of the Voters' List is to furnish an official alphabetical register of all persons qualified as voters. It is also to enable all persons interested in the election to have a check at hand at the time of polling the votes: *Regina ex rel. Dundas v. Niles*, 1 C. L. Ch. 198. And so that the voter may be easily identified when he tenders his vote at the polls: *Lincoln (Berston's Case)* 2 App. R. 324. “No person shall be admitted to vote unless his name appears on such list; and no question of qualification shall be raised at any election except to ascertain whether the person tendering his vote, is

sons being of the full age of twenty-one years (*g*) and subjects of Her Majesty by birth or naturalization (*h*), and appearing by the assessment roll

the same person intended to be designated in the said list:" *Election Act*, R. S. O. cap. 10, sec. 73,

(*g*) The full age of twenty-one years is completed on the day preceding the anniversary of a person's birth: *Anon.*, 1 Salk. 44. A. was born on the 16th August, 1725, and died on the 15th August, 1746: *Held*, that he lived to attain the full age of twenty-one years: *Toder v. Sansam*, 1 Brown's P. C. 468. If by the entry on the Assessment Roll under the heading "age of the assessed party," it appears that the person is not 21 years of age, the Clerk cannot enter his name on the Voters' List; but such person, if he will attain the age of 21, within 60 days from the final revision and correction of the Assessment Roll, may apply to the Judge to have his name entered. (See sec. 8, sub-sec. 4, *post*).

(*h*) These words, "subjects of Her Majesty by birth or naturalization," cannot be construed to give the Assessor or the Clerk jurisdiction to determine whether a particular person, duly entered upon the Assessment Roll, is an alien or a subject of Her Majesty. The presumption of law is that "the resident and assessed inhabitants of this Province are British subjects:" *Per* Robinson, C. J., in *Regina ex rel. Carroll v. Beckwith*, 1 Pr. R. 284. The Clerk is bound to accept the proper entries on the Assessment Roll, and must leave to the judicial proceedings before the County Judge, the question of alienage or naturalization. But he is bound to make such entries on the Roll as indicate the "*sex*," or the "*age of the assessed party*," by which he can ascertain who are *adults* or *minors*, as there is no presumption of law affecting their right. If the Clerks find the term "alien" or "foreigner," or "not a British subject," entered on the Roll, he should not assume to determine the question of alienage or naturalization by omitting the name from the Voters' List. It may be here stated as an historical fact, in

to be entitled to vote in the municipality (i), pre-

this connection that a clause in the Election Bill of 1877, (40 Vic. cap. 10), directing the assessor to indicate on his roll British subjects or aliens, was struck out as giving an unwarrantable power to an assessor to determine a mixed question of law and fact, against the ordinary presumption of law. See Ontario Bills of 1877, No. 122.

(i) "Entitled to vote." Prior to the first Franchise Act of 1429, (8 Henry VI. c. 7,) the Common Law Franchise of England gave to all the resident inhabitants of each county, whether freeholders or not, the right to vote, (see note (b) p. 141). By that Act the "aristocratic spirits" of Parliament declared that the ownership of land worth 40s. a year, should be the standard for electoral intelligence in counties; but it left the common law or local charters to regulate the qualifications of borough voters. In 1832 the Imperial Reform Act effected a great revolution in the law affecting electors; which was followed in 1867, 1878 and 1884 by Acts largely extending the franchise; and under which seven classes of voters in counties, and five classes in boroughs have now the right to vote at Parliamentary Elections in England. In Canada, up to 1853-4, the county franchise—still keeping to a landed qualification—was limited to "owners," and the city and town franchise to "owners" and "tenants." Then "occupants" were added. In 1874 the electoral capacity of persons assessed for "income" was recognized. But it was in 1877 that the first partial abandonment of the old statutory qualification was made by the admission of "Farmers' Sons" to the franchise. In 1885 a further extension in the same direction was sanctioned, giving some additional legislative recognition to the old common law franchise. Modern political legislation is gradually repealing the Act of 1429; but still the people's right of suffrage depends upon their being classified under an elaborated series of titles, having a minimised and vicarious grasp on a "property" qualification, and registered under rules which in some instances are inharmonious and technical. The following table summarises the present titles and qualifications of voters at Legislative and Municipal elections.

LEGISLATIVE ELECTORS.

Persons assessed as—	Residence in Electoral District.	Assessed Value of Qualification.
(1) <i>Owners</i> (2) <i>Tenants</i> (3) <i>Occupants</i> (4) <i>Indians</i> — Subject to the same qualifica- tions and restric- tions as other persons, and who are— (a) Enfranchised... (b) Not resident with other In- dians (c) Not participat- ing in annuities*	Residents at final revision of the As- sessment Roll, and at the Election.	Cities and Towns \$200; Villages and Townships, \$100.
(5) <i>Income</i> (6) <i>Wage-earners</i> (7) <i>Householders</i> †— sole tenants or oc- cupants of dwell- ing-houses..... (8) <i>Landholders' sons</i> — (a) Sons of owner Father owner Mother owner (b) Sons of tenant Father tenant Mother tenant	Residents continu- ously since final revision of the As- sessment Roll, and at the Election. Residence in father's dwelling for 12 months prior to Assessor's return of the Assessment Roll, and at the Election.	\$250 taxable. \$250 to \$400 not taxable. No assessed value. Father as owner of 20 acres, no as- sessed value; as owner or tenant of other real prop- erty: cities and towns, \$400; vil- lages and town- ships, \$200.

MUNICIPAL ELECTORS.

Persons assessed as—	Residence in Municipality.	Assessed Value of Qualification.
(1) <i>Freeholders</i> (or Own- ers)..... (2) <i>Householders</i> (or Oc- cupants) (3) <i>Tenants</i> (4) <i>Income</i> (5) <i>Farmers' Sons</i> (a) Sons of owners of farm..... Father owner Mother owner	Residents and Non- residents..... Residents for one month before the Election Residents continu- ously since final revision of the As- sessment Roll Residents with father on farm owned by father for 12 months prior to Assess- or's return of the Assessment Roll	Cities, \$400. Towns, \$300. Villages, \$200. Townships \$100. \$400. Father's farm assessed at an amount suffi- cient to give father and each son a vote at above ratio of qualification.

* This applies where there is no Assessment Roll or Voters' List.

† This is additional to the qualification of a Householder as an "Occupant."

fixing to the name of each person his number upon the roll (j).

(2) The first of the three parts shall contain ^{First Part.} the names, in alphabetical order (k), of all male persons of full age and subjects as aforesaid, appearing by the assessment roll to be assessed for the real property or income requisite to entitle him* to vote in the municipality at both municipi- **Sic.*

(j) The number on the Assessment Roll is required for the purpose of a more easy identification of the voters, especially where there may be more than one person of the same name on the Roll. The Clerk cannot investigate the right of any person to be entered upon the Voter's List; but he is bound by what appears properly recorded upon the Assessment Roll, and he must take the Roll as his sole guide: *Re Lincoln*, 2 App. R. 324.

(k) The list made out ought to be an alphabetical list: *Hunt v. Hibbs*, 5 H. & N. 123. The primary object of instituting lists was to secure greater efficiency and convenience in conducting the elections, by making the lists the sole record and table of reference on election day. To this end it was absolutely essential that the alphabetical list should contain the name of every person entitled to vote. It was expedient, but not essential, that it should comprise a description of his real property for the purpose of identification, which was the only question of qualification which could be raised at the election: *Per Moss, C.J., Re Lincoln (Berston's Case)*, 2 App. R. 334. The electoral list is a document of the highest importance, for upon its validity may depend the legality of the election. No element of uncertainty should be allowed to find its way into the proceedings affecting it; and it is the duty of the Court to insist upon a strict adherence to the directions of the legislature regarding it: *Marcotte v. Paquin*, 5 Q. L. R. 168.

Legislative
and Muni-
cipal elec-
tors.

pal elections (*l*) and elections for members of the Legislative Assembly (*m*).

(*l*) The Municipal Franchise, since 1885, is higher than the Legislative Franchise, and includes three classes of voters. The qualifications of persons whose names are to be taken from the Assessment Roll and entered on the Voters' List in the first part (and who are not disqualified as defined in notes (*n*), (*o*) and (*q*) pp. 11, 12,) are: (i) male persons of full age, (ii) resident and non-resident, as described in the table to note (*i*), and who are qualified as follows:

(1) *Real Property Franchise*: (*a*) Entry of name on the Assessment Roll as (*b*) Freeholder (F.) or Owner (O.); Householder (H.) or Occupant (Oc.); or Tenant (T.), of real property; (*c*) of the assessed value in cities, \$400; towns, \$300; incorporated villages \$200; townships, \$100.

(2) *Income Franchise*: (*a*) Entry of name on the Assessment Roll; (*b*) as assessed for income of not less than \$400; (*c*) residents in the municipality.

(3) *Farmers' Sons' Franchise*: (*a*) Entry of name on the Assessment Roll,—the provision for which entry was repealed by 48 Vic. cap. 42, sec. 4, (O.); (*b*) being the son of the owner and actual occupant of a farm of not less than 20 acres; (*c*) assessment of such farm at an amount sufficient, if divided between such owner and his sons, to give the statutory qualification to each.

(*m*) In the preparation of this first part, the Clerk should refer to the Election Act, sec. 4, and ascertain whether any of the persons apparently qualified as above, appear on the Assessment Roll under the column "occupation," as holding any of the disqualifying official positions which prevent them voting at Legislative elections. The persons qualified to be entered as Municipal Electors as above defined, are also qualified to be entered as Legislative Electors, unless disqualified from voting at Legislative elections by the *Election Act*, such as Judges of the Superior and County Courts, Officers of Customs, Clerks of the Peace, County Attorneys, Registrars, Sheriffs, Deputy Sheriffs, Deputy

(3) The second part (n) shall contain the names, in alphabetical order, of all other male persons of full age and subjects as aforesaid [and of all widows and unmarried women (o) of full age and subjects (p) as aforesaid, and] appearing on the assessment roll to be entitled to

Second
part.

Clerks of the Crown, Crown Land Agents, Postmasters in Cities and Towns, Excise or Inland Revenue Officers (R. S. O., cap. 10, sec. 4); and Stipendiary Magistrates (48 Vic. cap. 2, sec. 10).

(n) The qualifications of persons to be entered on the second part as *Municipal voters* only are : (1) Male persons of full age who are entered upon the Assessment Roll. (2) Farmers' sons, where the amount of the assessment of the farm of 20 acres, if equally divided between father (as owner) and sons, would give the municipal qualification to each, and whose names are not entered in the first part. (3) Widows and unmarried women who are in their own right rated for a property or income qualification sufficient to qualify male voters to vote, (see 47 Vic., cap. 32, sec. 3).

(o) Women are not entitled to vote at any Parliamentary election by R. S. O. cap. 10, sec. 6. Women being under legal incapacity have no common law right to vote in England : *Chorlton v. Lings*, L. R. 4 C. P. 374 ; *Wilson v. Township of Salford*, L. R. 4 C. P. 398. Nor in Ireland : *Hudson on Election*, 159. Similarly in Scotland, " by a long and uninterrupted custom : " *Brown v. Ingram*, 7 Sess. Cas. (3rd ser.) 281. By 32 & 33 Vic. cap. 55 (Imp.), women are entitled to vote for councillors, auditors and assessors at Municipal elections in England ; but they lose that right on their marriage : *Reg. v. Harvald*, L. R. 7 Q. B. 361. By 47 Vic., cap. 32, (Ont.), widows and unmarried women may vote at Municipal elections in Ontario. See further note (c), p. 40, *Hodgins on the Canadian Franchise Act*.

(p) See note (h), p. 6.

Municipal
electors
only.

vote in the municipality at municipal elections only, and not at elections for members of the Legislative Assembly.

Third part. (4) The third part (q) shall contain the names,

(q) The third part is to contain the names of those who possess the qualifications defined in note (l) p. 10, but who lose their Municipal franchise in Municipalities by non-payment of taxes on income (46 Vic., cap. 18, sec. 81); or where a by-law has been passed under the *Consolidated Municipal Act*, 1883, (46 Vic. c. 19, sec. 490, sub-sec. 2), disqualifying electors for non-payment of taxes, when the Voters' List is prepared after the date mentioned in the by-law; and (2) those who have been adjudged guilty of bribery or undue influence at Municipal elections: (*ibid.* sec. 212); (3) the Clerk of the Municipality: (*ibid.* sec. 156, sub-sec. 2). In addition to those indicated in note (l) p. 10 *ante*, the names of the following persons not entered on the first part, should be taken from the Assessment Roll and entered on the Voters' List as qualified to vote at *Legislative elections* only, and who are not disqualified as defined in note (m), and who must be in all cases, (a) male persons of full age; (b) resident and domiciled in the electoral district:

(1) *Real Property Franchise*: (a) Entry of name on the Assessment Roll as (b) Owner, (O. or T.) Occupant, (Oc. or H.) or Tenant (T.) of real property, (c) of the assessed value in cities and towns of \$200; in incorporated villages and townships of \$100.

(2) *Income Franchise*: (a) Entry of name on the Assessment Roll (b) as assessed for income of not less than \$250.

(3) *Wage-earner's Franchise*: (a) Entry of name on the Assessment Roll; (b) having earned wages or income of not less than \$250, but (c) who is not taxable for the same.

(4) *Householders' Franchise*: (a) Entry of name on the Assessment Roll as (b) householder, (H. or Oc.) and as sole tenant and occupant of a dwelling house; (c) no assessed value required.

in alphabetical order, of all other male persons of full age and subjects as aforesaid, appearing by the assessment roll to be entitled to vote in the municipality at elections for members of the Legislative Assembly only, and not at municipal elections.

(5) The name of the same person shall not be entered more than once in any such part (r)].

Legislative
electors
only.

Name to be
entered
once.

(5) *Landholders' Sons' Franchise* : (a) Entry of name on the Assessment Roll ; (b) as the son of the owner and actual occupant of a farm of not less than 20 acres (no assessed value required in the case of sons of owners of farms) ; or (c) as the son of an owner (O. or F.) or tenant (T.) of real property ; (d) of the assessed value of \$400 in cities and towns, or \$200 in incorporated villages or townships. There is no provision, as in the case of Municipal electors, requiring the number of sons' votes to be regulated according to the assessed value of the farm or other real property. If the assessed value appears as stated above (\$400 or \$200), all the sons (of full age) resident or domiciled with the father, are entitled to be entered on the Voters' List as Legislative electors.

(6) *Indian Franchise* : (a) Indians are subject to the same qualifications and restrictions as other persons mentioned above ; and in addition : (b) must be enfranchised, or (c) where there is a Voters' List, not be residing with other Indians though participating in Indian annuities, etc. or (d), where there is no Voters' List, not be residing with other Indians, and not participating in Indian annuities, etc.

(r) There is an ambiguity in this section owing to the use of the terms " municipality " and " ward " in the various clauses of this section which will create some difficulty in construing it. The *Franchise and Representation Act, 1885*, (48 Vic. cap. 2), limits the right to vote at legislative elections to residents within the electoral district ; and the above clause

Lists for
polling sub-
divisions.

(6) Where a municipality is divided into polling sub-divisions, the list (to be made in three

(5) when read in connection with sub.-ss. 1, 2, 3 and 4, requiring the Clerk to make out a list of all persons "entitled to vote in the municipality," show that the clauses of the Voters' Act have been framed in harmony with the rules governing the legislative rather than the municipal franchise, viz: one entry on the Voters' List of the *Municipality*, and one vote. But sub-sec. 8 evidently varies that construction, for it provides that a person assessed in two or more polling sub-divisions in a "*ward of any municipality*" is to be entered in one sub-division only of such ward; and, if known to the Clerk, in the sub-division in which he resides. The term "municipality" includes cities, towns, townships, villages and counties, (46 Vic. cap. 18 secs. 2, 3 and 5). Of these the two first named (cities and towns) must be, and the third (townships) may be, divided into the municipal sub-divisions called "*wards*," (sec. 294). The *Consolidated Municipal Act*, 1883, gives an elector at municipal elections in cities and towns the right to vote for aldermen or councillors in *each ward* in which he is assessed for a property qualification, except for Mayor, Reeve or Deputy Reeve, (sec. 136); but negatives any such right to vote "in townships and incorporated villages divided into *wards*," (sec. 137.) In preparing the several parts, the Clerk must be guided by the two Acts. In cities and towns where multiple votes are allowed for municipal elections, he must recognize the *ward* divisions for municipal voters, and where he finds a voter assessed for property to the qualifying amount in various wards he should enter his name on the lists for each of the wards in which he is qualified to vote at Municipal elections. But as multiple votes are not allowed for Legislative elections, and as each voter at such elections must be "a resident of and domiciled within the Electoral District for which he votes," the Clerk in preparing the Voters' List for Legislative Elections, should enter the name only *once*, and in the polling sub-division in which the voter resides. A

parts as aforesaid) shall be made for each of such sub-divisions (s).

(7) If the qualification of any such person is in respect of real property, the Clerk shall, opposite the name of the person, insert, in the

Voter's real property to be inserted on the list.

difficulty may, however, occur in cases where the Clerk has no knowledge of, or is uncertain as to, the residence of the voter, as where a voter has a place of business in one ward and a residence in another; or a place of business in one municipality and a residence in another, or where a municipality is divided for legislative elections. And in entering the name according to residence it must be remembered that the term "residence" or "resident" is a mixed question of fact and law. Residence is where one habitually sleeps. *Prima facie* a man's home is where his wife lives: *Reg. v. Norwood*, L. R. 2, Q. B. 457. For the exercise of a personal franchise, a person can only be said to be conversant where his bed is; for in that part of the house he is more conversant: 2 *Co. Inst.* 122. Residence is where a man establishes his abode, and makes the seat of his property: *Chase v. Miller*, 41 Penn. 403. A man who has two houses in two electoral districts, and lives and sleeps in each when he pleases, resides in both electoral districts within the meaning of the Act: *Taylor v. St. Mary Abbott*, L. R. 6, C. P. 309; s. p. *Bond v. St. George*, *Ibid.* 312. In all cases of doubt the Clerk should be guided by the Assessment Roll, and leave all questions of law and fact to be settled by the County Judge in the Court for the Revision of the Voters' Lists.

(s) Where the township is divided into Municipal wards and also into polling sub-divisions for elections to the Legislative Assembly, the Clerk is bound to follow the directions of the Act, viz: to make out the Voters' Lists according to the boundaries of the polling sub-divisions, as well as according to the ward divisions.

proper column of the voters' list, the number of any lot or other proper description of any parcel of real property in respect of which each person is so qualified; (t) adding thereto, where

(t) It should appear on the Assessment Roll by what title the voter claims the franchise, whether for real property or income, or as a wage-earner, or land holder's, or a farmer's son. For "the number of the lot or other proper description of the real property," the Clerk must look to the Assessment Roll alone. The Assessor in preparing his roll is required (R. S. O. c. 180, s. 12), "after diligent enquiry," to set down "according to the best information to be had," "the number of concession, name of street, or other designation of the local division in which the real property lies," "number of lot, house, &c., in such division." The English Registration of Voters' Act (6 Vic. c. 18, s. 101), requires that "the person, place or thing shall be denominated in such schedule, list, register or notice as commonly understood." The words "commonly understood" would seem to imply some clumsy description, which, though inaccurate, sufficiently points to the house or other thing described: *Flounders v. Donner*, 2 C. B. 63. As where a person describes a parish by a popular name, or where part of a name is omitted: *Ebsworth v. Farrer*, 4 C. B. 9. "The Rate Roll must specify the description of property in respect of which the occupier is rated,—house or land, or something by which it may be ascertained whether he is properly rated:" *Per Abbott, C. J., Rex v. Aire and Calder Navigation Company*, 4 D. & R. 253, s. c., 2 B. & C. 243. The direction in the form appears to intend that if a house be in a street, lane, or other like place in the parish, the street or lane shall be mentioned; and that if the houses be numbered the number also shall be given; but that if the house and premises be not in a street or lane, or other like place, but on a road or on a common, or the like, then the name of the property shall be given, if known by any, or the name of the occupying tenant: *Ekersley v. Barker*, 7 M. & Gr. 76, s. c., 8 Scott

the person is so qualified [in respect of more than one such lot or parcel, the words "and

N. R. 890. It is a question of fact for the Revising Barrister whether the nature or description of the qualification is sufficiently described for the purpose of being identified: *Wood v. Willesden*, 2 C. B. 15. The place of abode of a voter is no part of his qualification: *Luckett v. Knowles*, 10 Jur. 99. A voter's place of abode was described as "Greenwich," whereas his true place of abode was Queen's Square, Bloomsbury: *held*, an inaccurate description which the revising barrister had power to correct: *Ibid*. The voter was described as of "The Grove, Neasdon." It was shewn that "Neasdon" was not a street, lane, or like place, and that the property was not situate in any street, lane, or like place, but was known by the above name: *held*, a sufficient description: *Ibid*. So "Poplar Grove, Didsbury," without stating where Didsbury was situated: *Gadsby v. Warburton*, 7 M. & Gr. 11. The object is to give reasonable information where the party is to be found: *Ibid*. "House and shop, High street" is sufficient. *Daniel v. Camplin*, 7 M. & Gr. 167. So "Owner, Yate street" without further description: *Re Lincoln (Berston's case)*, 2 App. R. 324. "Part of a house" is a good description of the nature of the qualification: *Judson v. Luckett*, 2 C. B. 197. The property occupied by the voter consisted of a farm-house and some land at some distance from the farm in the same township. The farm was known by no particular name, but the whole property was entered opposite the voter's name as "Brock lane and elsewhere in Thornton:" *Held*, sufficient: *Birks v. Allison*, (*Dixon's Case*), 13 C. B. N. S. 24. Ambiguity in the description of the qualification as "Leasehold, house and garden," will not invalidate: *Jones v. Jones*, L. R. 4 C. P. 422. If a person be duly assessed for a named property on the Roll, even although there may be a clerical error in describing the property on the Voters' List, or in erroneously setting down another property on the Voters' List, if no question or difficulty arise at the poll as to

Landholder's son and wage-earner.

other premises ;"] and in the case of the person being a [landholder's] son (*u*) [or a wage-earner (*v*)] within the meaning of *The Election Act*, and any Act amending the same, the clerk shall

taking the oath, the vote will not be struck off : *Brockville*, 7 Can. L. J. 221. The provisions of the law as to how voters are to be entered on the Voters' List in respect to their property are directory : *Prescott*, H. E. C. 780. Mistakes in copying the Voters' List should not deprive legally qualified voters of their votes : *North Victoria*, H. E. C. 584. See further, note (*k*) p. 9.

(*u*) In regard to the "Son's" franchise, the Clerk in preparing the several parts of the voters' list must notice the difference between those qualified to vote at Legislative, as distinct from Municipal, elections. "Occupant's sons," if so entered on the Assessment Roll, have no right to vote at either "Landholders sons," may be divided into three classes :—(1) Sons of owners of farms. (2) Sons of owners of other real property ; and (3) Sons of tenants of real property. There is no assessable value of the father's farm required in the case of the first class, to qualify them to vote at Legislative elections ; but to qualify them to vote at Municipal elections the father's farm must be assessed at such a value, as, if divided between father and sons, would give \$100 qualification to each. The other two classes of "sons" are qualified to vote at Legislative Elections, if the father's property is assessed at \$400 in cities and towns, or \$200 in villages and townships, as stated in the table appended to note (*i*) p. 8 ; but they have no right to vote at Municipal Elections.

(*v*) See the distinction in the "income" qualifications of voters at Legislative and Municipal elections, in the table, note (*i*) p. 8. The "income" qualification is not uniform for both Legislative and Municipal electors. "Income voters" must be assessed for income \$250 for Legislative Elections, or \$400 for Municipal Elections. "Wage-earner voters" must

also, in the proper column of the voters' list, state that fact and the place at which the voter resides in the municipality (*w*).

[(8) Where a ward of any municipality is divided into polling sub-divisions (*x*) and it appears by the assessment roll that any person is assessed in each of two or more such polling sub-divisions in the ward for property, sufficient to entitle him to vote, (*y*) the clerk shall enter his name on the list of voters in one such sub-division only, and shall, as required by the preceding sub-section, insert opposite his name the

Where voter assessed in several sub-divisions of same ward.

Only one entry of name on the list.

be entered on the Assessment Roll, but are not to be assessed for taxable income; and they must have earned \$250 during the year.

(*w*) Prior to the amendment of 1886, income voters were only qualified to vote if resident in the local municipality in which they were assessed; now they may vote if resident within the electoral district. See 49 Vic. cap. 3. (O.)

(*x*) This clause is new, and it may be referred to as indicating the intention of the Act, to recognize the ward divisions of cities and towns in the preparation of the voters' lists, as they must be for the purpose of voting at Municipal Elections. The clauses will some further legislative amendments to make them harmonious with the separate franchises for Legislative and Municipal Elections.

(*y*) "Entitle him to vote." To give full effect to these words the Clerk should read the clause in connection with that part of note (*r*) p. 13, which refers to only one entry on the list for Legislative Elections, and multiple entries on the ward lists for Municipal Elections. The values of separate properties may be added together to give a qualification: *Wood v. Hopper*, 1 C. P. D. 192. See further, note (*b*), p. 20.

additional words "and other premises;" and where, within the knowledge of the clerk, such person resides in one of such polling sub-divisions, his name shall be entered as aforesaid in the list of voters for that polling sub-division (z)].

When property partly in one sub-division and partly in another.

(9) (a) Wherever it appears by the assessment roll that any person is assessed for property within the municipality sufficient to entitle him to vote (b) but that it lies partly within the limits of one of such sub-divisions and partly within another or others, the clerk shall enter his name on the list of voters in [one] of the sub-divisions [only] in which such property is situate, with the following words added: ["Partly qualified in sub-division No. ."]

How noted.

(z) This gives a Clerk the right to add to the Voters' List an entry which may not be on the Assessment Roll, of the voter's residence, and which affects his right to vote at Legislative Elections. A landholder's son, when required at an election, must swear that he has resided on the father's or mother's, grandfather's, or stepfather's farm for twelve months prior to the date of the Assessor's return of the Assessment Roll, and that he is still a resident of the *Electoral District*. Income voters, when required at the election, must swear that at the date of the final revision of the roll, they were, and thenceforward have been continuously, and still are, *residents of the Electoral District* in which they are assessed and vote.

(a) This was sub-section 8 of the original Act.

(b) Where a person "is assessed within a municipality," under this sub-section, or is assessed in each of two or more polling sub-divisions in the ward, under sub-section 8, for a number of small lots, he may have the total assess-

(10) If the qualification is in respect of [taxa- ^{Income.} income, the clerk shall, in the proper column of the voters' list, state that fact and the place at which the voter resides in the municipi- ^{Residence} pality (c).

(11) An assessment roll shall be understood ^{When as-} to be finally revised and corrected (*d*), when it ^{essment} has been so revised and corrected by the Court ^{roll is} of Revision for the the municipality, or by the ^{finally re-}vised.

ment of all such lots added together, and if the total assessment is "sufficient to entitle him to vote," his name is to be entered on the list of voters. But such person is not to vote at more than one polling place under a penalty of \$100: R. S. O. cap. 10, sec. 86. A voter voted at polling sub-division 5, where by the Assessment Roll the property on which he voted was situated. His name was not entered on the Voters' List for No. 5, but for No. 4: *Held*, that his vote was good, and he should not be disfranchised because a mistake was made: *Brockville*, H. E. C. 129.

(c) See note (z), p. 20.

(*d*) This provision was first enacted in 1853, (16 Vic. cap. 153, sec. 11), but was repealed in 1855 by 18 Vic. cap. 87. It was re-enacted in 1858 by 22 Vic. cap. 82, with the addition that the decision of the County Judge on any cases decided by him under the Assessment Act should be final and binding on Legislation Committees. In the consolidation of the statutes, this latter provision was altered so as to make the Assessment Roll, when revised and corrected by the Court of Revision or the County Judge, final and binding on Legislation Committees: C. S. C. cap. 6, sec. 6, sub-sec. 6. In 1869 the clause was re-enacted in 31 Vic. cap. 21, (O.), but without the provision as to the finality of the Assessment Roll or Voters' List. In 1878 this principle of finality was incorporated in the Voters' List Finality Act:

R.S.O.
c. 180.

Judge of the County Court, in case of an appeal, as provided in *The Assessment Act*, or when the time during which such appeal may be made has elapsed, and not before (e).]

(41 Vic. cap. 21). Prior to 1869 the revised Assessment Roll was held to be binding on Election Committees in Election cases, as to the right to vote, and the value of the property assessed : *West Elgin*, 9 U. C. L. J. 330. And after 31 Vic. cap. 21, to be binding on the Courts in similar election cases, as to the amount or value of the property assessed, but not as to the right to vote : *North Victoria*, H. E. C. 584. And to be conclusive as to the qualification of Municipal electors : *Regina ex rel. Chambers v. Allison*, 1 Can. L. J. 244 ; *Regina ex rel. Ford v. Cottingham*, *Ibid.* 214.

(e) It is important in interpreting this sub-section, to keep in mind the respective proceedings before the Court of Revision, and the County Judge. The Court of Revision is required to meet and finally pass the Roll, whether complaints has been made against the Roll, or not. But the County Judge has no jurisdiction to revise or correct the Roll, unless there has been (1) a complaint or appeal presented to the Court of Revision, and (2) a "decision of," or an "omission, neglect, or refusal, to hear, or decide an appeal" by the Court of Revision. (R. S. O. cap. 180, sec. 59). The dates at which the Assessment Roll "shall be understood to be finally revised and corrected," will therefore vary according as to whether any proceedings by way of complaint or appeal have, or have not, been taken before the Court of Revision or County Judge. The dates may be determined by the following rules:—

(1) *If there has been no complaint or appeal to the Court of Revision*, then, on such day after the 26th May, as the Roll is finally passed by the Court of Revision, and certified by the Clerk as passed: (R. S. O. cap. 180, sec. 57).

(2) *If there has been a complaint or appeal to the Court of Revision, and no appeal to the County Judge*, then when the

3. Immediately after the Clerk has made the said alphabetical list, and [within forty days (*f*) in cities], and in other municipalities within thirty days (*g*) after the final revision and correction of

Copies of list to be printed.

[Amended by 48 Vic. cap. 3, sec. 8].

time (five days after the first day of July) during which such appeal may be made has elapsed and not before: viz., on the 6th July. (*Ibid.* sec. 59, sub-sec. 2.)

(3) *If there has been an appeal to the County Judge, then on such day prior to the 1st August, as "the decision of the Judge" is given on the appeals.* (*Ibid.* sec. 60).

These dates are most important to be noted, for the Clerk is required by the *Election Act* (R. S. O. cap. 10, sec. 71), to give to each Deputy Returning Officer a certificate of the day on which the Assessment Roll was returned by the assessor—by which the right to vote of Farmers' and Landholders' sons is to be determined; and of the day on which such Roll was finally revised and corrected,—by which the rights of voters in respect of real property and income are to be determined. "Such certificate shall determine the dates to be inserted in the oaths to voters at the polls." As this certificate is of so much importance in fixing the time at which the Franchise is retained or lost, the Clerk is bound to see that in giving it, he fixes the dates in accordance with the rules laid down in the statute, and as above explained. The dates will vary in the several Municipalities of the Electoral Division according to whether appeals have or have not been made to the Court of Revision, or County Judge.

(*f*) The original Act required the list to be prepared within thirty days after the final revision. The section, as amended by 48 Vic. cap. 3, sec. 8, extends the period to forty days in cities, but in all other municipalities the ordinary period of thirty days is retained.

(*g*) From note (*e*) to the preceding section it will be seen how the period of "thirty days after the final revision and correction of the Assessment Roll" may be said to commence to run. Under rule (1) it will be thirty days after the day on which

Copies to be posted in clerk's office, and copies to be sent to certain persons.

the assessment roll, the clerk (*h*) shall cause at least two hundred copies of said list to be printed (*i*) (in pamphlet form where practicable), and

the Roll is finally passed by the Court of Revision, as certified by the Clerk as so passed (R. S. O. cap. 180, sec. 57). Under rule (2) it will be thirty days after the 6th July, or on the 5th August. Under rule (3) it will be thirty days after the date of "the decision the County Judge," on the appeals to him from the Municipal Court of Revision. In cities where the period allowed is forty days, the preceding dates may be extended by ten days. And where the period of making the Assessment has been altered, as referred to in note (*e*) p. 4, the proper dates may be ascertained by similar computations.

(*h*) The failure of the Clerk to perform the duties prescribed by the Act within the times appointed, is not to render null, void or inoperative any of the lists in the Act mentioned (sec. 23, *post*). The English Registration Act (6 Vic. cap. 18, sec. 25) provides that the list shall not be invalidated by imperfect publication as to name or place, and the Revising Barrister is to proceed on any list published for any part or the prescribed time; but the overseers and clerks are to be liable to the penalties for neglect or wilful default: See *Mather v. Overseers of Allandale*, L. R. 6 C. P. 272. And it is not necessary that the clerk should have acted from a corrupt motive; it is sufficient if he has disobeyed wilfully the provisions of the Act: *Tarr v. McGahey*, 7 Car. & P. 389. An information against municipal officers for refusing to put a voter's name on the list should allege that they knew of his right to vote: *State v. Daniels*, 44 N. H., 383. Mistake of duty and honest intentions will not excuse the offender: *Amy v. Supervisors*, 1 Wall. 136.

(*i*) Where the overseers in preparing the lists for publication placed the name of C., a voter, under the proper heading, but the printer by mistake inserted on the sheet which commenced with C.'s name a heading applicable to

forthwith shall cause (j) one of such printed copies to be posted up, and to be kept posted up, in some conspicuous place in his own office (k), and deliver or transmit by post, by registered

another list, and the overseers published the list as printed, with the error, the Revising Barrister decided that there had not been a publication of the proper list, and expunged the name of C. and all the names which followed his under the wrong heading: *Held*, reversing the decision of the Revising Barrister, that there had been a sufficient publication of the list, and that the votes should have been retained: *Mather v. Overseers of Allandale*, L. R. 6 C. P. 272. When owing to the printer's mistake certain freeholders were entered on the Voters' List as "farmers' sons:" *Held*, that such mistake should not invalidate their votes: *Prescott*, H. E. C. 780.

(j) The duty of the Clerk, after the printing of the lists, is :

(1) To post up and to keep posted up in his office one printed copy.

(2) To deliver or transmit by post (registered) to certain official persons, two, three, or ten copies each, with certificate.

(3) To publish in some newspaper within or next the Municipality, or in the County Town, a notice stating that he has transmitted the copies, and mentioning the date of the first posting of the list in his office.

(k) The posting of the lists in the public office of the Clerk of the local municipality, is intended to give notice to the electors and all other parties interested, that the lists are posted ; so that objections may be made against the names of the persons entered thereon, and that claims may be made by persons wrongfully omitted therefrom within the time limited by sec. 9 of this Act ; *i. e.*, thirty days after such posting up. See further, note (n), p. 28.

letter, or by parcel or book post, registered (l) three of such copies to each Judge of the County Court of the County to which for judicial purposes the municipality belongs ; and two copies

(l) This provision " to transmit by post by registered letter, or by parcel or book post, registered," is similar to the provision of sec. 100 of the English Act, respecting notices of objection to votes. All that the Legislature requires (by that Act) is that the party should deliver the notice at the proper office within the proper hour, and that he should pay the proper fees for its registration, and wait for, and receive back, one of the duplicates stamped with the post office stamp: *Allan v. Waterhouse*, 1 Lutw. 92, s. c., 13 L. J. C. P. 129. It appeared that the notices were duly posted on such a day as was sufficient for them to have reached their destination within the time required by the statute, but from some neglect in the post office they did not reach their destination until after that time: *Held*, that the service was sufficient: *Bayley v. Nantwich*, 2 C. B. 118. So although the notice was not delivered by the post office authorities: *Bishop v. Helps*, 2 C. B. 45. A person putting into the post office a letter properly directed has done all that is necessary for him to do, and is not answerable for casualties occurring in the post office: *Dunlop v. Higgins*, 1 H. Lds. Cas. 381; *Harris's Case*, L. R. 7 Ch. App. 569; *Johnston v. Provincial Insurance Company*, 27 C. P. 464; *Shannon v. Hastings Mutual Insurance Company*, 2 App. R. 81; *Sed contra British and American Telegraph Company v. Colson*, L. R. 6 Ex. 114; *McCann v. Waterloo County Fire Insurance Company*, 34 Q. B. 376. The Post Office is for the purposes of the Act, the agent of the sender: *Smith v. Huggett*, 11 C. B. N. S. 55. By 38 Vic. cap. 7, sec. 37 (D.), when a letter is deposited in the Post Office, it ceases to be the property of the sender, and becomes the property of the person to whom it is addressed.

to each of the following persons, that is to say (m) :—

(a) Every member of the Municipal Council of the Municipality except the Reeve ;

(b) The Treasurer thereof ;

(c) The Sheriff of the County ;

(d) The Clerk of the Peace ;

(e) Every Postmaster in the Municipality ;

(f) Every Head Master or Mistress of a Public or Separate School in the Municipality.

4. The Clerk of the Municipality shall forthwith also deliver or transmit by post, by registered letter, or by parcel or book post, registered, ten of such copies to each of the following persons, that is to say :—

Clerk to transmit copies to certain persons.

(a) The Member of the House of Commons The M.P. for the Electoral District in which the Municipality or any part thereof lies ;

(b) The Member of the Legislative Assembly The M.P.P. for the Electoral District in which the Municipality or any part thereof lies ;

(c) Every candidate for whom votes were given at the then last election of a member for the House of Commons and for the Legislative Assembly respectively ; and

Candidates.

(m) The object of the Act in directing copies of the lists to be sent to the above named officers, is to ensure publicity for the lists, so that all electors may examine them and take steps to ensure a proper revision.

Reeve.

(d) The Reeve of the Municipality.

5. [As amended by 48 Vic. cap. 3, section 9.]

Clerk to
certify as
to certain
matters on
each copy
of list.

Upon each of the copies so sent to each person shall be a printed or written certificate (Form 2) over the name of the Clerk (n) stating that such list is a correct list of all persons appearing by the last revised assessment Roll of the municipality to be entitled to vote at elec-

(n) One S., the Clerk of a Municipality, duly prepared the alphabetical lists, had them printed with the proper certificate over his name, and ready for transmission at a date mentioned in the printed certificate. Before that date arrived, he died, and a new Clerk was appointed, who, finding the lists prepared and printed, posted one copy in his office, and transmitted the copies to the official persons mentioned in the Act. Complaints were lodged within the prescribed time, but objection was made that the County Judge had no jurisdiction owing to the notices not having been signed or given by the new Clerk. The County Judge overruled the objection; and, on an application for a writ of prohibition: *held*, that the provisions respecting the duties of the Clerk, were directory, and that as the object of the statute was fulfilled to all intents and purposes, the lists were properly before the County Judge, and he had jurisdiction to revise them: *Re Goderich Voters' Lists*, 6 Pr. R. 213. The object of having the Clerk's name to the lists is to authenticate them as coming from the Clerk's office: *Ibid*. The provision in the statute requiring the signature of the officers is only directory, and a list not so signed is not invalid: *Morgan v. Perry*, 17 C. B. 334. The sending of the lists to the persons and officials named is directory only, and any negligent or wilful withholding of such lists, or a false certificate as to such sending, will not effect the legal revision or authentication of such lists: *Re L'Original Voters' Lists*, 9 Pr. R. 425.

tions for members of the Legislative Assembly, [and at municipal elections in said municipality]; and further, calling upon all electors to examine the said list, and, if any omissions or other errors are perceived therein, to take immediate proceedings to have the said errors corrected according to law (o).

6. The Sheriff shall immediately upon the receipt of his copies cause one of them to be posted up in a conspicuous place in the Court House; the Clerk of the Peace, upon receipt of his copies, shall cause one of them to be posted in a conspicuous place in his office; every Public or Separate School Head Master or Mistress shall in like manner post up one of his or her copies on the door of the school-house; and every Postmaster shall post up one of his copies in his post-office (p).

Sheriff,
clerk of the
peace,
teacher
and post-
master to
post up
a copy.

(o) Where a statute provides that a thing is to be done at a certain time and in a certain way, the statute ought to be strictly followed. The notice here provided for, is to warn the electors interested that the lists are posted, and that the time within which complaints are to be made, can be ascertained either at the Clerk's office, or from the notice in the newspaper, stating the date of the first posting up of the list in the Clerk's office.

(p) The English Registration Act (6 Vic. cap. 18, sec. 23) requires the notices to be affixed in some conspicuous situation on the outer door or outer wall, near the door of every church, public chapel, and town hall, and (sec. 24) to continue posted thereon for at least two consecutive Sundays. In case the notice should be destroyed or mutilated, it should be renewed as soon as conveniently may be, by affixing another in its place: *Rogers on Elections*, 130.

Clerk to
publish
notice of
first post-
ing up by
him.

7. The Clerk shall (*q*) also forthwith (*r*) cause to be inserted in some newspaper published in the municipality, or in case no newspaper is published in the municipality, then in some newspaper published in the municipality next thereto, or in the County Town, a notice (Form 3), signed by him, which shall state that he has delivered or transmitted the copies of said list as directed by this Act; and shall also mention the date of the first posting up of said list in his office (*s*). One insertion of such notice shall be sufficient.

(*q*) The Interpretation Act, R. S. O. cap. 1, sub-sec. 8, provides that in every Act of the Legislature of Ontario, "the word 'shall,' shall be construed as imperative, and the word 'may,' as permissive." Statutes which direct a public officer to do certain acts, within a limited time are construed as imperative: *Hunt v. Hibbs*, 5 H. & N. 126. "It is of enormous importance that these things should be done in the way the Legislature directs, otherwise there would be continual questions and disputes raised by certain classes of persons, who act in such a way as to render it very difficult to administer the law:" *Per Martin, B. Ibid.*

(*r*) The terms "forthwith" and "immediately" should always receive a reasonable construction. They should, in general, be construed to mean as soon as can reasonably be done: *Regina v. Robinson*, 4 P. & D. 391. They mean a reasonable time: *Doe v. Sutton*, 9 C. & P. 709. When no time is expressly mentioned for the performance of an Act, the law considers it shall take place within a reasonable time: *Greaves v. Ashlin*, 3 Camp. 426; *Ellis v. Thompson*, 3 M. & W. 445. A question of reasonable time for the performance of an Act, is a question of fact and not of law: *Startup v. Macdonald*, 2 M. & Gr. 395.

(*s*) This notice is perhaps of as much importance as the printing and distribution of the Voters' Lists, for it is the

8. [As amended by 48 Vic. cap. 3, section 4.]

(1) The said list of voters shall be subject to revision by the County Judge (t), at the

Revision of
Voters' list.

only public notification of the date from which the right of appeal commences to run. The neglect of the Clerk to give this notice may deprive the parties concerned of their right to appeal against the lists. Where in cases of appeals to the Court of Revision, the Clerk was required by the statute to serve notices of appeals "at least six days before the sitting of the Court," which he neglected to do, and the Court of Revision refused to hear the appeals; a mandamus to the Court of Revision to compel them to hear and determine the appeals was refused: *Regina v. Court of Revision of Cornwall*, 25 Q. B. 286. The time for appealing against the Voters' List commences to run from the date of posting the lists in the Clerk's office, not from the date of his sending copies of the lists to the persons and officials named in the Act; and the negligent or wilful withholding of such lists from the persons and officials named, or a false certificate as to such sending, will not affect the legal revision of such lists, if such lists had been duly posted: *Re L'Original Voters' Lists*, 9 Pr. R. 425.

(t) It is essential to the validity of an election, that the parties named on the Voters' Lists, and voting at the election, should possess the proper Electoral Franchise, in the Electoral Districts concerned; and that result can only be arrived at by a careful and exhaustive examination of the Voters' List, after it has been published by the Clerk under this Act. Every facility is provided for obtaining printed copies of the proposed list, and sufficient time is given (30 days), after the posting of the lists, for a careful investigation of every vote which may be gained, or lost, by entry on, or omission from, the list, preparatory to the election contest. And this examination is now all the more important, and will demand so much more care and investigation, for the purposes of claim or objection, as the Voters' Lists to

instance of any voter (*u*) or person entitled to be a voter (*v*) in the municipality for which the list is made, or in the electoral district in which the municipality is situate (*w*), on the

be used at elections hereafter are, by the "Voters' Lists Finality Act" of 1878, to be "final and conclusive evidence of the right of all persons named therein to vote at any election," except as to disqualifications arising subsequent to the revision by the County Judge, or under secs. 4, 5, and 6 of the *Election Act*.

(*u*) "Voter." In the English Corrupt Practices Act of 1854 the word "voter" is defined to mean "any person who has, or claims to have a right to vote in the election of a member to serve in Parliament."

(*v*) "A person entitled to be a voter." The County Judge has the right to examine and decide whether the person making complaint of errors and omissions in the list of voters is "a voter or person entitled to be a voter," although such complainant may appear on the Roll as duly qualified, and his vote is not appealed against: *Re Parsons and Toms, and the Voters' List of Goderich*, 36 Q. B. 88. "Had the Legislature meant that the fact of being on the Voters' List, entitled the person to be a complainant, it would have been easy so to have enacted. When they speak of 'a voter or person entitled to be a voter,' they mean something beyond the mere being on the list:" *Per Hagarty, C. J., Ibid.* But if a voter's right to be on the Voters' List is not objected to, there is no jurisdiction to question such right: *Smith v. James*, L. R. 1. C. P. 138.

(*w*) "In the municipality for which the list is made, or in the electoral district in which the Municipality is situate." This would seem to qualify as a complainant any "voter or person claiming to be a voter" in any municipality within the electoral district.

ground (*x*) of the names of voters being omitted from the list (*y*) or being wrongly stated therein

(*x*) The grounds of complaint here specified, are in addition to the specific grounds set out in sub-secs. (3), (4) and (5) and 48 Vic. cap. 3, sec. 6, and also of the special powers to amend the lists vested in the County Judge by 42 Vic. cap. 3, secs. 2 and 3, *post*. A statement of the grounds of complaint is given in the Appendix, Form 16.

(*y*) The first ground of complaint—the *persons omitted* from the list—may include the following cases:

(1) Owners, or Freeholders, Tenants, Householders or Occupants, (Municipal Elections), Householders, (Legislative Election), Farmers' Sons, and Landholders' Sons, who were qualified as to real property at the date of the revision of the Assessment Roll, but whose names were omitted by the Clerk in preparing the Voters' Lists, or were not entered on the Assessment Roll.

(2) Persons (as above) omitted from the Voters' List entitled to be assessed to a sufficient amount to give the Legislative (see table note (*i*) p. 8 *ante*.) or Municipal qualification; (see table, note (*i*) p. 8 *ante*.)

(3) Persons (as above) who had acquired their interest in the real property before the date of the final revision of the Roll; (see notes (*e*) and (*h*) p. 39.

(4) Farmers' or Landholders' sons who had resided on the farm, or other real property, of their father, etc., for twelve months prior to the return of the Assessment Roll, and who are entitled to vote at Legislative and Municipal Elections; (see note (*i*) p. 8 *ante*.)

(5) Income voters omitted from the Voters' Lists, but whose names are entered, or entitled to be entered on the Assessment Roll, and are assessed thereby for income over \$400 (Municipal Elections) or \$250 (Legislative Elections.)

(6) Wage-earners whose names are entered on the Assessment Roll or are entitled to be entered on the Voters' Lists (Legislative Elections.)

(z), or of names of persons being inserted on the list who are not entitled to vote, (a) and upon

(7) Householders who are sole tenants and occupants of dwelling-houses (Legislative Elections.)

(8) Any person whose disqualification under the *Election Act* (sec. 4) was removed prior to the date of the final revision of the roll, or of the notice of complaint.

(z) The *second* ground of complaint of *persons wrongly stated*,—will include misnomers in name, or misdescriptions of title or locality of property, or of the sub-division where such property is situated. Misnomers are questions of fact as whether a person, place or thing is so denominated as to be commonly understood: *Hinton v. Hinton*, 7 M. & Gr. 163. Where the surnames were correct, although the Christian names were erroneous: *Held*, votes good: *Regina ex rel. Chambers v. Allison*, 1 Can. L. J. 244. Thus *Wilson* for *William Wilson*, *Simond* for *Alexander Faulkner*. Thomas Sanderson was held *idem sonans* with Thomas Anderson, so as to entitle the person bearing the latter name to vote: *Ibid.* Nathl. Beggs sufficiently identifies Nathaniel Beggs: *Carroll v. Beggs*, 15 Ir. C. L. 370. The abbreviations Frank for Francis, Fred for Frederick, Harry for Henry, Joe for Joseph, everybody of ordinary common sense would understand: *Per Lopes, J., in Moorehouse v. Linney*, 15 Q. B. D. 279. See also *Oldham Election (Brown's Case)*, 1 O. & H. 152 (*Horsfall's Case*), *Ibid.* 153.

(a) The *third* ground of complaint, *persons not entitled to vote*, will include the following classes of cases:—

(1) Persons who have died. (Form 6.)

(2) Persons under the age of twenty-one years; subject, however, to the provisions of sub-sec. 4. See note (j) p. 40.

(3) Persons not subjects of Her Majesty by birth or naturalization.

(4) Persons (as above) who had lost or parted with their interest in the assessed property prior to the date of the final revision of the Assessment Roll. See note (e.) p. 22.

such revision (b) the assessment roll shall not be

(5) Farmers' or Landholders' sons whose father or mother, &c., was not or had ceased to be the owner, or tenant, and actual occupant of the assessed property, prior to the final revision of the Assessment Roll.

(6) Farmers' or Landholders' sons, who had not resided on the farm, or other real property, of their father, or mother, etc., for twelve months prior to the return of the Assessment Roll; (1st May or such other date as the Assessor has actually returned the Roll to the Clerk.)

(7) Persons whose property has been assessed too high, for the purpose of giving to them, or, with them, to any joint owners, tenants, or occupants, farmers' or landholders' sons, the statutory qualification.

(8) Persons owning or occupying, jointly with others, the assessed property (whether the names of such others do or do not appear on the Assessment Roll), and by reason thereof, the property is not rated at an amount sufficient, if equally divided between all the parties so jointly interested, to give the statutory qualification to each.

(9) Income voters, who are not assessed, or who were not, at the date of the final revision of the roll, residents of the Electoral District.

(10) Income voters or wage-earners, who were not, at the date of the final revision of the roll, and for twelve months previously, in receipt of an income from some trade, office, or profession of the statutory amount.

(11) Persons disqualified by statute (see notes (m) p. 10, (o) p. 11, (m) p. 12, and (f) p. 38.)

(b) "Upon such revision, &c." These words, taken in connection with section 22, give the County Judge the power to assess "any person not assessed," and to increase the assessment of "any person not sufficiently assessed," and to make such persons liable for the taxes on such assessments. The County Judge has also the power to reduce the assessed value

conclusive evidence (c) in regard to any particular, whether the matter on which the right to vote depends had or had not been brought before the Court of Revision, or had or had not been determined by that court; [and upon such

of property which has been assessed too high, for the purposes of his decision "in regard to the right of any person to vote;" but such reduction of the assessment does not carry with it a reduction of the liability to taxation. "For example, a person has procured his property to be assessed above its value in order to enable him to vote. The Judge decides that the true value is under the amount which qualifies. The decision is final as disqualifying the would-be voter, but he remains liable to pay taxes on the full amount on the roll." *Per Patterson, J. A., Lincoln (Borrowman's Case)*, 2 App. R. 316.

(c) "Shall not be conclusive evidence," infers that the assessment roll is *prima facie* evidence. The process of assessment is in the nature of a judicial proceeding: *Per Strong, J., in Nicholls v. Cumming*, 1 S. C. R. 427. Where the law presumes the affirmative of any fact, the negative of such fact must be proved by the party averring such negative: *Williams v. East India Company*, 3 East 192. Disputable presumptions of law may always be overcome by opposing proof. The law defines the nature and amount of the evidence which is sufficient to establish a *prima facie* case, and to throw the burthen of proof on the other party; and if no opposing evidence is offered, the jury are bound to find in favour of the presumption: 1 *Taylor on Evidence*, 115. If a disputable presumption of law is in favour of an affirmative allegation, the party who supports the negative must call witnesses to rebut the presumption: *Ibid*, 335. The name of a claimant appearing on the list of voters returned to the Clerk of the Peace, and on the list for poor rates, establishes a *prima facie* case to be registered as a voter: *Byrne's Case*, 6 Ir. C. L. 412. The name of the

revision any person who is a wage-earner within the meaning of *The Election Act*, or of any Act amending the same, shall not be disentitled to have his name entered on said list, either by reason of his having omitted to make, sign or deliver any statement required by the provisions of *The Assessment Act* to be so made, signed or delivered by him, or by reason of his name not having been entered on the assessment roll as such wage-earner^(d); and the decision of the judge under this Act, in regard to the right of any person to vote, shall be final so far as regards such person^(e).

^{48 Vic. cap 42, sec. 5.}

voter being on the poll book is *prima facie* evidence of his right to vote. The party attacking the vote may either call the voter, or offer any other evidence on the subject: *Stor- mont*, H. E. C. 21. *Prima facie* evidence of qualification throws the onus on the objector to meet the same by proof of disqualification: *Moore's Case*, 7 Ir. Jur. 59.

(d) This gives "wage-earners" a second opportunity of having their names entered as voters on the Voters' List. If the County Judge finds the claim sustained he may enter the name on the Voters' List, and on the Supplementary Assessment Roll; for although the power of the County Judge under sec. 22 *post*, would appear to apply to persons liable to pay taxes, the right to make all necessary amendments to the Assessment Roll so as to confer the right to vote, is implied.

(e) "I do not read those words, 'and the decision of the Judge under this Act in regard to the right of any person to vote shall be final so far as regards such person,' as importing more than that the judgment as to the assessed property is final in its effect on the right to vote." *Per Patterson, J. A. Lincoln (Borrowman's Case)*, 2 App. R. 316.

Appeal in
case of per-
sons dis-
qualified
under
R. S. O.
cap. 10

(2) A complaint or appeal (Form 4) may be made on the ground of any person whose name is entered on the list being one of those who are disqualified or incompetent to vote under *The Election Act* (f).

Applica-
tions by
persons
who have
acquired
property
since as-
sessment.

(3) If, before the final revision and correction of the assessment roll, any person named as a voter in the said list of voters has died or, having parted with the property (g) in respect of

(f) This may also be within the *third* ground of complaint referred to in note (a), p. 34 *ante*, and will include all the official persons disqualified as Legislative electors under the *Election Act*, sec. 4; and also the following persons disqualified for corrupt practices; (1) Candidates found guilty of corrupt practices by the report of the Election Judge, (R. S. O. cap. 10, sec. 161); (2) Electors proved on the trial of any election petition, to have been bribed (*Ibid.* sec. 163); (3) Persons, other than candidates, found guilty of any corrupt practice in any proceeding in which, after notice of the charge, they have had an opportunity of being heard (*Ibid.* sec. 164). The report of the Election Judge, that a voter was bribed, does not disqualify him: *Bewdley*, 1 O. & H. 175, "The Act speaks of 'an opportunity of being heard,' and I think that does not merely mean that kind of opportunity which a witness has, who is called up, upon the spur of the moment, and who is subject to cross-examination; but it means an opportunity of being heard, when he has had fair warning of the charge, and is asked to meet it, and be heard by himself or his counsel:" *Per Blackburn, J., Ibid.* Before a voter can be found guilty of corrupt practices he must have an opportunity of being heard: *South Huron*, 29 C. P. 301; s. p. *Dufferin*, H. E. C. 529. See also *Grant v. Pagham*, 3 C. P. D. 80.

(g) This amendment first appeared on the Voters' List of 1879, 42 Vic. cap. 3, sec. 4. The original sub-sec. of R. S. O.

which his name was entered in the voters' list, has, within the meaning of section 7 of *The Election Act*, ceased to be a resident of the electoral district, the person who, at the time of such final revision and correction, was in possession of the said property shall, if otherwise qualified to vote, be entitled to apply to the judge to be entered on the said list instead of the person first named in this section (*h*); and the proceedings to be taken in any such case shall be the same as in cases of appeals under this Act (*i*).

(4) Any person who is rated, or entered, or liable to be rated, or entered on the assessment roll, either for real property or income of the

Persons
who will be
of age with-
in 60 days
of revision.

cap. 9, gave to the person who had parted with the property the right to apply to be entered on the Voters' List for other property or income, which he might do under the next subsec. (4).

(*h*) This gives a personal right of appeal to the person who becomes interested in the real property since the assessment, and who was in possession at the date of the final revision of the Roll. The change can only be made on the application of the party in possession: *Per Moss, C. J. A.* in Case No. 7, Appendix. The application should be for the two-fold purpose of striking out the name of the former owner, and of entering the name of the applicant in place thereof.

(*i*) The procedure prescribed by sec. 9, and form 5, for making any complaint of any error or omission in the list, is a notice to the clerk or head of the municipality; and the proceedings thereupon are the same as in the case of an appeal to the County Judge from the Municipal Court of Revision. See R. S. O., cap. 180, secs. 59-66.

amount requisite to entitle him to vote, or as a landholder's son or a wage-earner, within the meaning of *The Assessment Act* or of *The Election Act* or of any Act amending the same (*j*), and who will be of the age of twenty-one years (*k*) at any time within sixty days from the final revision and correction of the assessment roll, shall be entitled to apply (*l*) to the judge to have his name entered upon the voters'

(*j*) This enables one who is near, or just over, the age of 21 years, to apply to be entered on the Assessment Roll and Voters' List; and the County Judge may so enter the name, if he finds the applicant legally qualified. See notes (*g*) and (*h*) p. 6 and (*a*) p. 34. If on an application to strike off the name of a minor from the Voters' List, the evidence brings the case within the above clause, the County Judge should retain the name under 42 Vic. cap. 3, sec. 3. Where a voter is objected to as a minor, and it appears that he became of age previous to the revision of the lists, his name will not be struck off: *Powell v. Bradley*, 18 C. B., 165.

(*k*) The interpretation given to section 11 of the Voters' List Act of 1874 (sec. 22 of this Act), was that the County Judge had no power to insert on the Voters' List, the name of any person claiming to be qualified as an income voter, unless such person had been entered upon, and assessed for income, by the last revised Assessment Roll: *Lincoln (Borrowman's Case)*, 2 App. R. 316. The above clause alters that interpretation, and enables persons not entered on the Assessment Roll but claiming the right to vote in respect of income, to apply to be entered on the Supplementary Assessment Roll and Voters' List.

(*l*) There is no form prescribed by the Act, but the form 5a may be found appropriate.

list, or upon the assessment roll and the voters' list, as the case may require (*m*).

(5) Any such landholder's son and any wage-earner entitled to be assessed (*n*) or entered in the assessment roll of any municipality under *The Assessment Act*, or any Act amending the same, shall, in all respects and for all purposes, have the right to apply and complain (*o*) to the judge on the revision of the voters' lists, and to have his name entered and inserted in the list.

Application by landholders' sons and wage-earners.

9. (1) Any voter or person entitled to be a voter (*p*) making any complaint of any error or

Proceedings on complaint of errors in the list.

(*m*) The right to apply to be entered on the Assessment Roll, as well as Voters' List, infers a power in the County Judge to enter the name on the Supplementary Assessment Roll as well as on the Voters' List, if the claim is sustained by proper evidence. See note (*d*) p. 37.

(*n*) "Entitled to be assessed." These words are inapplicable to the case of either a farmer's or landholder's son, or a wage-earner, none of whom are liable to assessment.

(*o*) "Apply and complain." These words confer a two-fold right: the right to apply to have his own name or the names of others entered, or misnomers corrected on the Voters' List as set out in notes (*y*) and (*z*), p. 33, 34; and the right to complain as set out in note (*a*) p. 34.

(*p*) See notes (*u*) and (*v*) p. 32. The right here conferred is not a mere private privilege, but a matter of public concern; as the Voters' List, when completed and revised, is the foundation of all proceedings relating to elections to the Legislative Assembly and Municipal Councils, and is "final" for all the purposes of such elections. It is therefore essential to the validity and fairness of all such elections that the

omission (*q*) in the said list shall, within thirty days (*r*) after the clerk of the municipality

persons named on the Voters' List, and voting at such elections should possess the proper franchise in the Electoral District or Municipality concerned; and this result can only be arrived at by a careful and exhaustive examination of the Voters' List, after it has been published pursuant to this Act. Facilities are provided for obtaining printed copies of the list, and time is given after the posting up of the lists for a careful investigation of every vote, which may be gained, or lost, by entry on, or omission from the list, preparatory to the revision by the County Judge. Frequent revisions will tend to familiarize officers and Judges with the elaborated and technical rules and limitations under which the people acquire the right of suffrage; and will also assist in guarding the lists from the fraudulent operations of the elastic consciences of unscrupulous electioneering agents. After all the facilities provided by this Act for purging the lists as well as the sifting process through which the Assessment Roll is revised, no unqualified person should be found entered on the Voters' Lists.

(*q*) "Error or omission." These words refer to the grounds of complaint specifically mentioned in sec. 8, p. 31. See notes (*y*) (*z*) and (*a*), pp. 33, 34.

(*r*) "Within thirty days after the Clerk of the municipality has posted up the said list in his office." The day of the posting up of the list is not included in reckoning the thirty days, as the meaning of the sentence is "thirty days after the day of posting up." No exception is made for Sundays or other statutory holidays in the computation of time under this Act, as is made in the *Election Act* (R. S. O. cap. 10, sec. 196); *Controverted Elections Act* (R. S. O. cap. 11, sec. 106); *Common Law Procedure Act* (R. S. O. cap. 50, sec. 67), or *Ontario Judicature Act*, 44 Vic. cap. 5, rule 457. Nor is any extension of time allowed where the last of the thirty days falls on a Sunday or other statutory holiday. At common

has posted up the said list in his office, give

law Sunday was included in the calculation of time : *Rawlins v. West Derby*, 2 C. B. 72. Where, under a statute, the last day for giving notices of appeals from the list of voters happened so be on a Sunday : *Held*, that such notices might legally be given on that day ; the service on Sunday is not void by statute or common law : *Ibid*. A notice mailed so as to be received on Sunday is well served : *Colvill v. Lewis*, *Ibid*. 60. Where notice of an appeal from a conviction was required to be served "within six days after" the conviction, the conviction being on Monday, 2nd May, a notice of appeal served on Monday, 9th May, was too late : *Reg. v. Justices of Middlesex*, 7 Jur. 396. Where the limit of time under the Statute of Limitations expired on a Sunday, and the writ was not issued until the Monday : *Held*, that the right of action was barred by the statute : *Morris v. Richards*, 45 L. T. N. S. 210. Nomination papers were required to be sent in after the 14th and before the 26th March, or if such day was a Sunday, then the day following : *Held*, that the delivery of a nomination paper on Sunday, 26th March, might be treated as a delivery on the Monday following : *Reg. v. Poor Law Commissioners*, 1 Jur. N. S. 251 ; see also 4 E. & B. 314. "The reason of Sunday not being a day of business is the decent observance of the Sabbath:" *Per Eyre, C. J.*, in *Mesure v. Britten*, 2 H. Bl. 617. A notice to quit given on Sunday is valid : *Sangster v. Noy*, 16 L. T. N. S. 157. By R. S. O. cap. 119, chattel mortgages are to be registered within five days after execution. A chattel mortgage executed on the 12th was registered on the 18th, the 17th being Sunday : *Held*, that Sunday counted as one of the five days, and that the registration was too late : *McLean v. Pinkerton*, 7 App. R. 490. It is irregular to make an affidavit of debt, or to issue a writ on Sunday : *Hall v. Brush*, R. & J. Dig. 3683. A writ issued on a Sunday is a nullity : *Carrall v. Foulkes*, 5 D. & L. 590 ; and the date of the writ is not amendable : *McKinnon v. Proud*, 1 P. E. I. 474. Service of process on Sunday is absolutely void : *Taylor v.*

(s) to the clerk or leave for him at his residence or

Phillips, 3 East 155. So is service of a notice to produce: *Hughes v. Budd*, 4 Jur. 150. But notices respecting the registration of voters is not "process" of a judicial character: *Per Tindal, C.J., in Rawlins v. West Derby*, 2 C. B. 79. Service of a notice on Good Friday is good: *Clarke v. Fuller*, 2 U. C. Q. B. 99. Where the seven days limited for issuing a *capias* expired on a Good Friday: *Held*, that it might issue the earliest practicable day thereafter: *Hughes v. Griffith*, 13 C. B. N. S. 324. Where the last day for doing an act which is to be done by the Court, falls on a Sunday or holiday, it may be done on the next practicable day thereafter: *Ibid.* Where the last day for doing an act falls on a day upon which the offices are closed, by reason of its being a holiday there, then such day is not to be reckoned: *Wilkinson v. Britton*, 1 M. & Gr. 557. As the Courts do not sit on Sunday, no judicial act can be done until the following Monday: 1 *Ch. Arch.* 142. Where an election petition was to be filed twenty-one days after the receipt of the return by the Clerk of the Crown in Chancery, exclusive of holidays: *Held*, that in the computation of the twenty-one days Good Friday, Easter Sunday, and Easter Monday were excluded by the statute: *West Toronto*, 5 Pr. R. 394, 31 Q. B. 409. See also, *Gibson v. Michael's Bay Lumber Co.*, 7 Ont. R. 746. See further note (r) to sec. 11.

(s) When a statute directs that a claim shall be made within a certain specified time, this right will be forfeited by an omission to assert the right within the given time: *Doe dem. Watson v. Jefferson*, 2 Bing. 118. "The laws assist those who are vigilant, not those who sleep over their rights," is one of the maxims which we learn on our earliest attendance in Westminster Hall: *Per Heath, J., in Cox v. Morgan*, 2 B. & P. 412. It applies in Courts of Equity as well as in Courts of Law: *Per Lord Cranworth, in Leather Cloth Company v. American Leather Cloth Company*, 11 H. L. Cas. 523. And the maxim is obviously applicable whenever

place of business (t), notice (Form 6) in writ-

a party debars himself of a legal right or remedy, by his own negligence or laches: *Camidge v. Allenby*, 6 B. & C. 373. The maxim also applies to a voter who has neglected to apply to correct a mistake in the overseer's list of persons qualified to vote: *Per Coltman, J., in Onions v. Bowdler*, 5 C. B. 74. When the Legislature has fixed the time, it would be preposterous for the Courts to countenance laches beyond the period that it had been confined by Act of Parliament: *Smith v. Clay*, 3 Bro. C. C. 636n. The complaint must be made within the time limited: *Reg. ex rel. Telfer v. Allan*, Pr. R. 214; *Reg. ex rel. White v. Roach*, 18 U. C. R. 226.

(t) This allows either personal service on the Clerk, or upon a grown up person connected with his household or office. Service by post, or by registered letter, is not provided for. The Imperial Act (6 Vic. cap. 18, sec. 100) provided that notices should be sent by post, and that a duplicate notice stamped by the post office should be evidence of a notice having been given: *Held*, that service made by leaving the notices at the officer's place of abode was good service, the section being entirely an enabling enactment, and not taking away any of the modes of service which were consistent with the law as it stood before the statute passed: *Hickton v. Antrobus*, 2 C. B. 82; *Smith v. Huggett*, 11 C. B. N. S. 55. When the service is not personal, it may be served at the officer's place of abode on some grown up person connected with his household; *Mittleberger v. Whitehead*, Rob. & Jos. Dig. 2901. The notice must, however, be served in such a way as to come to the knowledge of the person intended to be served. Where no time is expressly mentioned for the performance of an act, the law considers it shall take place within a reasonable time: *Ellis v. Thompson*, 3 M. & W. 445. The lateness of the hour of service on the proper day does not affect its validity. A notice served on a grown person at the residence of the proper officer at twenty minutes past eleven o'clock at night: *Held*, sufficient in law: *Points v.*

ing (*u*) of his complaint and intention to apply

Attwood, 6 C. B. 38. But where the Revising Barrister found as a fact that a notice left between nine and ten o'clock at night, inside the entrance door of the house, was not a reasonable notice, the Court held it insufficient service: *Watson v. Pitt*, 5 C. B. 77. Where the notice was placed under respondent's door a short time before twelve o'clock at night, but the witness did not hear the clock strike: *Held*, not sufficient proof of service of the notice: 1 *Stephens on Elections*, 754. Where a public officer receives and acts upon a notice it must be assumed, in the absence of evidence to the contrary, that he received it in proper time: *Godsell v. Innous*, 17 C. B. 295.

(*u*) There is nothing in the Act which makes a personal signature of the complainant necessary, and therefore the common law rule *qui facit per alium facit per se* applies. But the notices of complaint should be subscribed by the complainant or his agent: *Re Simpson and the Judge of Lanark*, 9 Pr. R. 358. The notice should be a completed and authoritative document, for when once validly given its prosecution ceases to be "a mere private privilege, but a matter of public concern." *Per Osler, J., Ibid.* The Imperial Act of 1843 provides that "every notice of objection shall be signed by the person objecting;" and it was held, under that Act, that a notice signed by another person as agent or for the objector, though in observance of and by his directions, was invalid: *Toms v. Cumming*, 7 M. & Gr. 88. The notice of objection need not be signed by the objector on the day it bears date, but it is sufficient if it be signed by him on any day within the period he is by law qualified to object, and while he is qualified to give it. Therefore, a notice bearing date the 12th, but in fact signed on the 18th, August, was held good: *Jones v. Jones*, L. R. 1 C. P. 140. A notice with the date of the year left blank is bad: *Beenlen v. Hockin*, 4 C. B. 19. So a notice given in 1883, with the year written in words, but the last word "three" left out, is bad, although such notice had been pub-

to the judge in respect thereof; and if the office of clerk is vacant by reason of death, resignation or from any other cause, such notice may

lished by the overseers, and the Revising Barrister found that the claimant was not misled: *Freeman v. Newman*, 12 Q. B. D. 173. Although the claimant ought to write his signature himself, nevertheless, if written by the hand of another person, and such notice is acted upon, no third person can object to it on the ground of its not being properly signed: *Davies v. Hopkins*, 3 C. B. N. S. 376. It is sufficient if signed with the name of the claimant in the handwriting of another person by the authority of such claimant: *McNiffe v. McTiernan*, 3 Ir. Com. Law, N. S. 187. If the signature is "wholly illegible so that an ordinary person, unacquainted with the signature, could not, by perusing it with ordinary diligence and skill, arrive at any reasonable conclusion what the signature was intended to designate;" but if guided to the entry in the register by the objector's place of abode, he might, by comparing the notice with the entry, have inferred the identity: *Held*, reversing the Revising Barrister, that the notice was sufficient, on the ground that if the object of the statute was to authenticate the document, the signature was sufficient; and if the object was to inform the opposite party, the Revising Barrister had not found that it did not so notify: *Trotter v. Walker (Hallam's Case)*, 32 L. J. C. P. 60. Where the notice of objection was signed in such a way that the Christian name was legible, but the surname was found not to be decipherable without recourse to the entry on the register of the objector's name, or other extraneous assistance: *Held*, that whether the object of the statute in requiring a signature was to authenticate the document, or to give information to the objectee and Revising Barrister, the signature was sufficient: *Trotter v. Walker*, 13 C. B. N. S. 30. The usual signature of the objector was engraved on a stamp, and this stamp was impressed on the notice of objections: *Held*, sufficient: *Bennett v. Brumfitt*, L. R. 3 C.

be given in like manner to the head of the council of the municipality (*v*); and the proceedings thereafter by the clerk (*w*), judge

P. 28. It is not necessary that a separate notice of objection should be given in respect of each voter objected to in the list; all the names of the voters objected to may be included in a schedule to one notice: *Smith v. Holloway*, L. R. 1 C. P. 145. Where in the body of the notice, the objector, instead of using the pronoun "your," inserted his surname before his Christian name, but it was found to be "commonly understood:" *Held*, sufficient: *Force v. Floud*, 15 C. B. N. S. 543. A voter sent in his claim signed by his initials and surname; it was rejected because of the signature by initials: *Held*, that the information was sufficient, and that a mandamus should issue to have the name inserted on the list: *Reg. v. Hartlepool*, 15 Jur. 1158. The validity of the notice can be raised before the County Judge, although it has been received and entered on the list of appeals by the Clerk: *Re Simpson and The Judge of Lanark*, 9 Pr. R. 358. Technical objections as to matters of form before a County Judge on the revision of the Voters' Lists ought not to prevail where no one can be misled or injured by the alleged errors: *Per Richards, C. J., in Re McCulloch, and the Judge of Leeds and Grenville*, 35 U. C. Q. B. 451.

(*v*) The service of the notice on the head of the council may be made "in like manner" as the service on the Clerk. See preceding note (*s*.)

(*w*) The Clerk after receiving notice from the complainant, is to proceed according to the procedure prescribed by R. S. O. cap. 180, respecting appeals from the Court of Revision.. After the Judge notifies the Clerk (Form 8), of the day for the hearing of appeals, the Clerk, at least six days before the sitting of the Court, is to (1) give notice to each person complained against (R. S. O. cap. 180, sec. 59, subsec. 4), by causing the notice to be left at the person's resi-

(*x*), and parties (*y*) respectively, and the respec-

dence or place of business : (*Ibid.* sec. 56, sub-sec. 10) ; or if the person is not known, then to be left with some grown person resident at the assessed premises ; or if the person is not resident in the Municipality, then to be addressed to such person through the post office : (*Ibid.* sub-sec. 11). (2) Post a notice in his office, or in the Townhall (Form 9), containing the names of the complainant and parties complained against, with a brief statement of the grounds of complaint, and the date at which the Judge will hear the same : (*Ibid.* sec. 59, sub-sec. 5). (3) Act as Clerk of the Court : (*Ibid.* sub-sec. 6). See further as to the service of notices through the post office, note (l) p. 26.

(*x*) The Judge, after receiving the Clerk's report (Form 7), is to (1) notify the Clerk (Form 8) of the day he appoints for hearing the complaints, (R. S. O. cap. 180, sec. 59, sub-sec. 3). (2) If the Clerk has not given the required notices to the parties, he may direct services to be made for some subsequent day : (*Ibid.* sub-sec. 4). (3) He is to hear the complaints at the time appointed, or to adjourn the hearing from time to time, and defer judgment : (*Ibid.* sub-sec. 7) ; but so that such complaints shall be heard and determined, and the list finally revised, corrected, and certified within two months of the last day for making complaints, (41 Vic. cap. 21, sec. 8, *post*). The irregular holding of Revising Barristers' Courts has been held to vitiate the votes registered thereat : *Rogers on Elections* (10th ed.) 541. A Court cannot be adjourned by the crier without the presence of the Judge : *Rex v. Middlesex*, 5 B. & Ad. 1113. A Revising Barrister at the close of a sitting rose, without adjourning his Court to a future day ; but afterwards by letter he appointed a day for a further sitting beyond the time allowed by the Act, at which sitting a list of voters was produced, which, on no objections being made, he added to the register. On a scrutiny, all the voters on such list were struck off the poll : *Shaftesbury*, Fal & Fitz. 374. If there is an irregularity in

tive powers and duties of the judge (z) clerk and other persons, shall be the same, or as nearly as may be the same, as in the case of an appeal from the Court of Revision; but no deposit shall be required to be made before any such complaint is heard or disposed of (a). (See Forms 7-12).

the proceedings under which the voters have been registered, such irregularity will be investigated: *Cork, K. & O.* 279.

(y) If the party complained against, appears on the day appointed, he cannot be heard to object to the sufficiency of the notice to him: *Rawlins v. West Derby*, 2 C. B. 72. But where the appearance of the party was for the purpose of objecting to the want of service of the proper notices, *Held*, not a waiver: *Regina v. Court of Revision of Cornwall*, 25 Q. B. 286. To dispense with the proof of service there must be an actual appearance on the day the case is called on: *Grover v. Bontems*, 4 C. B. 70. "In all cases where a party is to be affected in person or property, by anything analogous to a judicial proceeding, the Courts, unless shut out from doing so by the most absolute and unequivocal words, invariably apply the sound rule of English law that no man shall be condemned unheard. So far, indeed, has this doctrine been extended that, in cases where a statute has been entirely silent on the subject of notice, the Courts have felt justified in implying it as a condition precedent:" *Per Strong, J.*, in *Nicholls v. Cumming*, 1 S. C. R. 428.

(z) In addition to the powers of the Judge under the Assessment Act in appeals from the Court of Revision, he has also, under sec. 14, *post*, "all the powers which belong to, or might be exercised by, him in the County Court."

(a) Prior to 1874, a fee of \$2 was exacted from appellants as security for the costs of the party appealed against, but the fee was abolished by 37 Vic. cap. 19, sec. 16.

(2) If the notice is given to or left for the head of the council, he shall perform or cause to be performed such necessary acts as should be performed by the clerk if there were one (b). The case of notice left with head of the Council.

[*The following sub-section was added by 48* Notice of holding court for complaints.
Vic. cap. 3, sec. 10:]—(3) No judge shall proceed with the holding of any court for hearing complaints as aforesaid, unless and until notice (Form 10) of the time and place of holding said court shall by the clerk have been published at least ten days before the sittings of such court, in some newspaper published in the municipality, or, if there be no such paper, then in some newspaper published in the nearest municipality in which one is published (c).

10.—[*As amended by 48 Vic. cap. 3, sec. 7.*] Compelling attendance of witnesses on revision of list.
—(1) Any party may obtain from the County

(b) The “necessary acts” to be performed are set out in note (w) to sub-sec. 1. Where on a vacancy a new Clerk is appointed, he can carry on the proceedings respecting the Voters’ Lists, commenced by his predecessor: *Re Goderich Voters’ Lists*, 6 Pr. R. 213.

(c) This clause makes the publication of a notice of the sitting of the Voters’ List Court in a newspaper at least ten days before such sittings, a condition precedent to the exercise of its jurisdiction. See *Reg. v. Cornwall Court of Revision*, 25 U. C. Q. B. 286. Negative words will make a statute imperative; words in the affirmative are directory only: *Rex v. Leicester Justices*, 7 B. & C. 12. Where the initiatory proceedings necessary to give jurisdiction to a public authority created by statute, are not taken as prescribed by the Act, all proceedings founded thereon are void: *Robinson v. McQuaid*, 1 P. E. I. Rep. 103.

Court a subpœna (*d*) (Form 13), or from the county judge an order (*e*), requiring the attendance at the court for hearing complaints as aforesaid, at the time mentioned in such sub-

(*d*) Disobedience of a subpœna of a County Court is a contempt of Court, and may be punished as such. The County Courts may punish by fine or imprisonment, or both, for any wilful contempt or resistance to their regular process, rules, or orders; but such fine shall in no case exceed \$100, nor shall such imprisonment exceed six months: (R. S. O. cap. 43, sec. 33). Every Court of record has the power to punish for contempt; but if the Court is one of inferior jurisdiction, the Superior Court may intervene and prevent any usurpation of jurisdiction by it; and if it treats conduct as a contempt, which there is no reasonable ground for so treating, may interfere to protect the party improperly punished: *Re Pater*, 5 B. & S. 299, s. c. 10 L. T. N. S. 376. No person should be punished for contempt of Court, which is a criminal offence, unless the specific offence charged against him be distinctly stated, and an opportunity of answering it given to him: *Re Pollard*, L. R. 2 P. C. 106, 120.

(*e*) For the purpose of this Act the Judge has "all such powers for the enforcement of his orders, decisions, and judgments, as belong to, or might be exercised by, him in the Division Court, or in the County Court, either in term time, or vacation." The County Court is a Court of Law and of Record: R. S. O. cap. 43. Inferior Courts of Record have authority to fine and imprison for contempt of their authority committed *in facie curiæ*; but not for contempt committed out of Court, such as speaking and writing contemptuously of the Court; *Reg. v. Lefroy*, L. R. 8 Q. B. 134. Where a Barrister during the sitting of a County Court used words which the Judge considered were used to insult the Court; on being told that unless he offered an apology he would be fined, to which he replied he had

pœna or order, of a witness residing or served (f) with such subpœna or order, in any part of this Province; and requiring any such witness to bring with him and produce at the court any papers or documents mentioned in the subpœna or order; and every witness served with such

nothing to say, and he was then adjudged guilty of a contempt of Court and fined: *Held*, on an application for a *certiorari*, that there was no excess of jurisdiction, and the Court would not interfere: *Re Lees and the Judge of Carleton*, 24 U. C. C. P. 214. The recital in a warrant of commitment that the party did wilfully insult the Judge during his sitting, is a direct adjudication that he had done so; and it is not necessary to set forth in such warrant the nature of such insult: *Levy v. Moylan*, 10 C. B. 189.

(f) The original writ of subpœna must be shown to the witness at the time of the service, or an attachment will not lie: *Wadsworth v. Marshall*, 3 Tyr. 228. The service must be personal upon the witness, and must be served a reasonable time before the trial. The witness has perhaps a reasonable time after the service has been effected to inspect the subpœna: 1 Ch. Arch. (10 ed.) 329, 335. Difficulty in serving a subpœna will not dispense with personal service unless it is sworn that the witness keeps out of the way to avoid personal service: *Barnes v. Williams*, 1 Dowl. P. C. 615. Whether a subpœna has been served in reasonable time is a matter for the Court. Service on a person living close to the place of trial at half-past eleven o'clock in the forenoon for a cause called at two o'clock in the afternoon is not sufficient: *Barber v. Wood*, 2 M. & Rob. 172. Where a person was served at twelve o'clock while standing on the steps of the Court House, and was told the trial would come on the same day, which it did at five o'clock, the service was held to be sufficient: *Maunsell v. Ainsworth*, 8 Dowl. P. C. 869. See further note (t) p. 45.

subpœna or order shall obey the same (*g*), provided the allowance for his expenses, according to the scale allowed in Division Courts, is tendered to him at the time of service (*h*).

Person
whose
right is in
question to
attend.

(2) Any person complaining, or any person in respect of the insertion or omission of whose name a complaint is made, shall, if resident within the municipality, the list of which is the subject of complaint, or within the municipality in which the court is held, upon being served with a subpœna or order therein, obey the same without being tendered or paid any allowance for his expenses (*i*); and where any such complaint

(*g*) An attachment against a witness will not be granted where the conduct money is not paid or tendered: *Newton v. Harland*, 1 M. & Gr. 956. Nor if the copy of the subpœna served, varies in any material degree from the original: *Doe v. Thompson*, 9 Dowl. 948. But where a subpœna tested on the 9th May, and served on the 19th, required the attendance of the witness on the 21st March instant, the Court considered that this was an error which could not mislead, and refused to set aside the service: *Page v. Carew*, 1 Cr. & Jer. 514.

(*h*) The witness fees allowed in the Division Court are: Attendance per day in Court, seventy-five cents, and ten cents per mile travelling expenses one way; but if the witness travels by railway or other public conveyance, then the ordinary fare, instead of mileage, is to be allowed. See *Sinclair's Division Court Acts*, 279.

(*i*) See notes (*d*) (*e*) and (*f*) pp. 52-3. The respondent's name appeared on the previous lists, and also on the current year's list. He was summoned by the objector, who proposed to examine him to prove he was not qualified to be on the list. The respondent declined to be examined until some evidence

is by or in respect of a person whose name is entered in the list of voters as being, or who is alleged to be, a wage-earner or landholder's son within the meaning of *The Assessment Act* or of *The Election Act*, or of any Act amending either of said Acts, such subpoena or order shall be deemed to have been sufficiently served upon such person under the provisions of this section (j) :

- (a) If such subpoena or order is served upon him personally ; or
- (b) Where such person has a known residence or place of business within said municipi-

was given to displace his right, and the Revising Barrister so ruled. The vote was retained : *Held*, reversing the Revising Barrister, that the respondent was bound to give evidence when called. *Peterson v. Balfour*, 10 Ir. C. L. 553. An objector has a right by cross-examination, or by evidence, to question the validity of a person's right to be registered ; and a claimant declining to submit to examination was properly rejected : *Hoey's Case*, 5 Ir. C. L. 62. Where the claimant was sworn and examined touching his right, but refused to answer, on cross-examination, questions affecting the validity of his right to be registered as a voter, his claim was rejected by the Revising Barrister, and such rejection was affirmed on appeal : *Disney's Case*, 1 Alc. Reg. Ca. 118.

(j) This is substantially the same as the procedure imported into this Act from the Assessment Act which provides, that if the person appealed against resides within the municipality, the notice may be left at his residence, or place of business ; or if not known, then it may be left with a grown person at the assessed premises ; or if the person is a non-resident, then the notice may be sent through the post office.

pality, if a copy of such subpoena or order is left for him with some grown person, at such residence or place of business (k) ; or

- (c) Where such person has no known residence or place of business within the municipality, if a copy of such subpoena or order is mailed to him through the post-office, with the postage thereon pre-paid, and addressed to him at the post-office address contained in any written affirmation made by him under *The Assessment Act*, or any Act amending the same (l) ; or

(k) The person served must be some grown up person or resident connected with the household, and not a stranger.

(l) When the objector serves the notice through the post office, and the party addressed resides at a distance from the office to which the notice is directed, he must shew that such notice would, in the ordinary course of post, be delivered to the party addressed in sufficient time : *Lewis v. Evans*, L. R. 10 C. P. 297. A notice was sent by post to the address of a voter ; but there was no postal delivery of letters at the place, and unless by some private accidental conveyance, the voter would not receive the notice : *Held*, not sufficient service : *Ibid.* Where notices were duly posted on such a day as was sufficient for them to have reached their destination within the time required by the statute, but from some neglect in the post office they did not reach their destination until after that time : *Held*, that the service was sufficient : *Bayley v. Nantwich*, 2 C. B. 118. So although the notice was not delivered by the post office authorities : *Bishop v. Helps*, 2 C. B. 45, " the statute enacts that it shall be 'sufficient' if the notice shall be sent by the post free of postage, directed to the person to whom it is sent. When these conditions are complied with, such a sending will be sufficient substitute for giving the notice

(d)

(3)
the s
ence
think
as to
to the
on th
person
refuse
the ca

to the p
abode :"
have no
the regis
Nosewort
address c
son, 7 Ap

(n) Se

(n) Th
of objecti
his object
right to b
order was
of his dis
Held, tha
applicatio
ready wit
kington, 31
off by the

- (d) Where such person is a landholder's son as aforesaid, if a copy of such order or subpoena is left for him with some grown person at the residence of the landholder whose son he is (m).

(3) If any person, whose right to be a voter is the subject of enquiry, does not attend in obedience to such subpoena or order, the judge, if he thinks fit, in the absence of satisfactory evidence as to the ground of such non-attendance, or as to the right of such person to be a voter, may, on the ground of the non-attendance of such person, strike his name off the list of voters, or refuse to place his name on the list of voters, as the case may require (n), or impose a reasonable Penalty for non-attendance.

to the person objected to, or leaving it at his place of abode:" Per Tindal, C. J., *Ibid.* The municipal officers have no power to alter the incorrect address of a voter on the register and to substitute the true address of such voter: *Noseworthy v. Buckland in the Moor*, L. R. 9 C. P. 233. The address on the letter must be decipherable: *Baillie v. Dickson*, 7 App. R. 759.

(m) See notes (t) p. 45, and (k) p. 56.

(n) The name of a voter was duly objected to in the notice of objections. The objector was present in Court to sustain his objection, but the voter did not attend to support his right to be on the register of voters when the name in its order was called; and the Revising Barrister, in the exercise of his discretion, struck the name off the list of voters: *Held*, that the name could not be restored on a subsequent application, and there was no proof that the objector was ready with his proofs on the second hearing: *Blain v. Pilkington*, 34 L. J. C. P. 55. Where a voter's name was struck off by the Revising Barrister owing to the non-attendance

fine on such person according to his discretion, or do both (o).

Names in
subpœna.

(4) Any number of names may be inserted in one subpœna or judge's order, in any case of complaint (p).

List con-
firmed if
no com-
plaint
within 30

11.—In case no complaint respecting such list is received by the Clerk of the Municipality (q),

of such voter: *Held*, to be an "express decision" of the Revising Barrister: *Oldham (Harper's Case)* 1 O. & H. 157.

(o) When the non-attendance of the person whose right to be a voter is the subject of inquiry, is the result of mere neglect, *i.e.*, "the absence of satisfactory evidence as to the ground of such non-attendance," or as to his right to vote, then a reasonable punishment would be his temporary loss of the franchise, by the omission of his name from the Voters' List for that year; but when such non-attendance is wilful—a fact which can only be determined on proper evidence—the punishment may be either loss of the vote, or a reasonable fine, or both.

(p) It is not necessary to issue a subpœna or order in each case. The names of all the witnesses, in all the cases, may be included in the one subpœna or order. See *Smith v. Holloway*, note (u) to sec. 9.

(q) In case the Clerk should refuse to receive complaints properly tendered to him, and should report to the Judge that no person gave him, nor did he receive, any written notice of complaint, the Clerk of the Peace, or any elector may, under sec. 24, apply summarily to the County Judge to compel the Clerk to perform his duties. But if the Judge has signed the lists on the certificate of the Clerk, he has no power to set aside his certificate of the final revision, or to re-open the lists: *Re L'Original Voters' Lists*, 9 Pr. R. 425.

within thirty days after (r) he has posted up the said list in his office, the said clerk shall forth-^{days after the Clerk has posted up the list.}

(r) The general rule for the computation of time fixed by statute is, unless there is something in the statute to the contrary, to hold the first day excluded and the last day included: *Rex v. Justices of Cumberland*, 4 N. & M. 378. The question whether, in computing time from an act or event, the day is to be included or excluded, may be thus stated: where the act done from which the computation is made, is one to which the party against whom the time runs is privy, the day of the act done may reasonably be included; but where it is one to which he is a stranger, it ought to be excluded: *Lester v. Garland*, 15 Ves. 248. Where an act is required by a statute to be done so many days "at least" before a given event, the time must be reckoned excluding both the day of the act and that of the event: *Reg. v. Justices of Shropshire*, 8 A. & E. 183. Similarly where the statute prescribes so many "clear days:" *Watson v. Eales*, 23 Beav. 294; and in computing such, Sunday is excluded: *Re Crooks*, 1 Chy. Ch. 304. "Our law rejects fractions of a day more generally than the civil law does. The effect is to render the day a sort of indivisible point, so that any act done in the compass of it is no more referable to any one, than to any other portion of it; but the act and the day are co-extensive; and therefore the act cannot properly be said to be passed until the day is passed:" *Per* Sir W. Grant, M. R. 15 Ves. 257. Judicial proceedings are to be considered as taking place at the earliest period of the day on which they are done: *Wright v. Mills*, 4 H. & N. 488: s. c. 5 Jur. N. S. 771. Also the Royal Assent to Acts of Parliament: *Converse v. Michie*, 16 U. C. C. P. 167. Time appointed for the sitting of the Court is mean time where the Court sits, and not Greenwich time: *Curtis v. March*, 3 H. & N. 866. Where the watch of a returning officer was used on the first day to open and close the poll, and to open it on the second day without objection as to its correctness, the time marked by his watch may be properly taken as the

with (s) apply (Form 14), either in person or by letter, to the judge to certify (Form 15) three copies of such list as being the revised list of voters for the Municipality; and the Judge shall retain one of such certified copies of the list, and deliver or transmit by post, registered, one of such certified copies to the Clerk of the Peace for the county or union of counties within which the Municipality lies (t), and one of such certified copies to the Clerk of the Municipality, to be kept by him among the records of his office (u).

correct time to close the poll : *Reg. ex rel. Lutz v. Hopkins*, 7 U. C. L. J. 152.

(s) In the temporary provisions made for the revision of the Voters' Lists of 1878, by 41 Vic. cap. 21, the limit of five days was fixed by sub-section 2 of section 5, instead of "forthwith," for the notification by the Clerk to the County Judge of complaints against the lists. Five days may therefore be held to be the legislative interpretation of the reasonable time allowed under the above directions of "forthwith."

(t) Where a municipal clerk posted the lists in his office, but withheld copies of the Voters' List from parties entitled to receive them; and by a false certificate made with intent to deceive the Judge, obtained the Deputy Judge's certificate authenticating the lists : *Held*, that as the time for making complaints commenced from the date of posting the lists, and not from the date of sending them to the parties named that the lists so certified could not be set aside : *Re L'Original Voters' List*, 9 Ont. P. R. 425. See further, note (k) p. 25.

(u) And thereupon, under the *Voters' List Finality Act*, the list, by virtue of the certificate of the Judge, becomes "final and conclusive evidence of the right of all persons named therein to vote at any election at which such list

s. 1
sai
rev
sha
a st
the
list
corn
was
Voter
Vote
name
there
by th
or by
South
(r)
and th
the V
makin
two m
11.
(w) 5
for the
out, in
him, a
actuall
be said
printed
of the J
B. N. S
statutor
officer,
the list
that hi
Barristo

12.—In case complaints are made as afore-
said, immediately after the list has been finally
revised and corrected by the Judge (v), the Judge
shall make or cause to be made, and shall sign,
a statement (Form 16) in triplicate, setting forth
the changes, if any, which he has made in the
list; and shall certify in triplicate (Form 17) a
corrected copy of the list (w). [The following

After final
revision,
Judge to
make state-
ment of
alterations
and certify
copies of
list.

was or could have been legally used." The effect of the
Voters' List Finality Act, 41 Vic. cap. 21, O., is to render the
Voters' List final and conclusive of the right of all persons
named therein to vote at Provincial elections, except where
there has been a subsequent change of position, or status,
by the voter having parted with the interest which he had,
or by the assessment roll, appeared to have, in the property :
South Wentworth, H. E. C. 531.

(v) The complaints are to be "heard and determined,
and the list finally revised, corrected, and certified under
the *Voters' List Act* within two months of the last day for
making such complaints," (41 Vic. cap. 21, sec. 8, *post*), i.e.,
two months after the thirty days mentioned in secs. 9 and
11.

(w) The practice under the Imperial Registration Acts is
for the Revising Barrister, before signing the lists to read
out, in open Court, the names expunged, and inserted, by
him, and all corrections made by him. Until the lists are
actually signed and delivered, the register of voters cannot
be said to be complete, even although, in the meantime,
printed copies of the register have been issued by the Clerk
of the Peace, and bear his name: *Brumfitt v. Bremner*, 9 C.
B. N. S. 1. In this case, as late as two months after the
statutory period, and before the signature of the proper
officer, and delivery to the sheriff (he being the custodian of
the lists), it was discovered, on the application of a voter,
that his name was accidentally omitted,—the Revising
Barrister not having expunged the name, but having

Statements
and cor-
rected
copies of
lists to be
prepared
by Clerk if
Judge so
directs.

clause was added by 42 Vic. cap. 3, sec. 5:]
And such statement in triplicate, and such corrected copies of the said list shall, if the Judge so order, and under his direction and supervision, be prepared by the Clerk of the Municipality, and for that purpose the Judge shall forthwith, after said list has been so finally revised and corrected, transmit or deliver to said Clerk all necessary papers and directions, which said papers and directions together with such statement in triplicate and such corrected copies shall within, at latest, the week next after (x) the said list has been so finally revised and corrected as aforesaid, be re-transmitted and delivered by said Clerk to said Judge, who thereupon shall immediately sign the said statement and certify the said corrected copies as aforesaid; but should the said statement and corrected copies not be re-transmitted and delivered by said Clerk to the Judge within the time above mentioned, the Judge shall immediately thereafter make and sign the said statement and

inadvertently caused the appearance of an erasure of the name: *Held*, that the Clerk of the Peace was justified in causing the name to be interlined, and that the name was duly registered: *Ibid*. Where the name of a voter was struck off the register of voters, by the mistake of the Revising Barrister, and the voter tendered his vote at the polls: *Held*, that the vote could be counted: *Oldham (Ogden's Case)*, 1 O. & H. 156. So when the voter was struck off improperly: *Ibid*.

(x) The words "immediately after," in the first part of the clause, are apparently entitled to be interpreted in accordance with the words subsequently used, as: "the week next after."

certify the said corrected copies of the said list (y).

(2) The Judge shall retain one of such certified copies and one statement, and shall deliver or transmit by post, registered, one of such certified copies and one statement to the Clerk of the Peace (z) for the county or union of counties

How the Judge shall dispose of the statements and copies.

(y) The clause is rather ambiguous. The Clerk after receiving "all necessary papers" from the Judge, is required to re-transmit the corrected lists to the Judge, "the week next after" the final revision; but if not sent within the time above mentioned, it is not clear how the Judge is "immediately thereafter" to make and sign the said statement, and certify the said corrected copies of the said list. The Clerk is subject to the summary jurisdiction of the County Judge, only on the complaint of the Clerk of the Peace or an elector. See note (k), and sec. 24. The County Judge cannot be both prosecutor and Judge. Where an obligation is created by statute, and a remedy expressly given for enforcing it, that remedy must be adopted: *St. Pancras v. Battenbury*, 2 C. B. N. S. 477. The above clause however is directory, and under a similar direction to overseers to sign and publish the lists of voters, it was held that the direction to sign was not obligatory, but directory; and that lists unsigned, or signed by one, or a minority, [of the overseers, were not invalid: *Morgan v. Parry*, 17 C. B. 334.

(z) The delivery of the voters' list to the Clerk of the Peace, determines which is the "proper list" for both Legislative and Municipal elections. By section 72 of the *Election Act*, (R. S. O. cap. 10) "the first and third parts of the last list of voters certified by the Judge, and delivered or transmitted to the Clerk of the Peace, under the *Voters' List Act*, at least one month before the date of the writ of election, shall be the proper list to be used at an election to the

within which the municipality lies, and one of such certified copies and one statement to the Clerk of the Municipality, to be kept by him among the records of his office (a).

Municipality to provide a court room.

13. It shall be the duty of the Municipality within which a Court is holden, to provide some suitable and convenient place, properly furnished, heated and lighted for the holding of such Court (b), and in case the same is not done

Legislative Assembly." The exceptions to the use of such list are defined in the six subsequent sections of the *Election Act*. Only the persons named in such voters' list can vote at the election. When a Voters' List was used at an election, which had not been filed for a month previous to the date of the writ of election, a scrutiny of votes was held and the votes affirmed or struck off according to the names entered on the proper list: *Prince Edward* (2) H. E. C. 161. Where the result of the election has not been affected by the use of an irregular Voters' List, the election will not be avoided: *Monck*, H. E. C. 154. By section 124 of the *Municipal Act*, the proper list of voters to be used at a Municipal election is the first and second parts of the last list of voters certified by the Judge and delivered or transmitted to the Clerk of the Peace under the *Voters' List Act*.

(a) By 41 Vic. cap. 21, sec. 12, the Clerk of the Municipality is required to furnish copies of the Voters' List to the Returning officer in four days after a written application for the same.

(b) This is similar to the provisions in the *Division Courts Act*, making it the duty of the municipality to provide accommodation for the Division Court, but "not in connection with any hotel:" (R. S. O. cap. 47, sec. 6). A delinquent municipality may be compelled to provide a suitable place for the Court by writ of *mandamus*: *Dale v. Municipal Council of Huron & Bruce*, 7 U. C. C. P. 378.

the Judge may hold said Court at such other place in the County (c) as he may deem proper ; and if the same is held elsewhere than in the County Court House, the proprietor or proprietors of the building in which it is held may recover from the Municipality which should have made such provision the sum of \$5 for each and every day during which such building is used for the purposes of such Court (d). Any Court held in the County Town shall be held in the County Court House, or in such other place in said County Town as the Judge may deem proper. Courts in county towns

14. In all proceedings before the Judge under this Act (e), the Judge shall have, with reference Powers of Judge.

(c) At such other place in the County would scarcely warrant the County Judge in holding the Revision Court outside the Electoral District. Questions affecting his jurisdiction to order the municipal officers and documents out of the municipality ; the duty of witnesses to attend without payment of witness fees, and the other powers of a County Judge under the Act, would have to be considered in determining where the Revision Court should be held under the powers conferred by this section. When an Act of Parliament establishes Courts for particular localities, all things which are to be done under the authority of the Court are to be done within the jurisdiction, unless the Act expressly or by necessary implication enables them to be done elsewhere: *Ex parte O'Loughlin*, L. R. 6 Ch. 406.

(d) The same provision exists in the *Division Court Act*, sec. 9, sub-s. 2.

(e) The County Judge when presiding in the Voters' List Revision Court, under the jurisdiction conferred upon him by this Act, has complete jurisdiction to judicially determine who are, and who are not, entitled to the franchise, as

to the matters herein contained, all the powers

voters at Legislative and Municipal elections. There is no appeal from the decision of the Judge on any question of fact, to any higher tribunal; and his decisions on other questions can only be reviewed in the Superior Courts by proceedings in the nature of applications for the Writs of Mandamus, Prohibition or Certiorari. In England there is a right of appeal from every "express decision" of a Revising Barrister; but under the *Voters' Lists Finality Act* (41 Vic. cap. 21, sec. 3), the Voters' List certified by the County Judge is final and conclusive as to the right of all persons named therein to vote at any election, at which such list is used, except in the special cases, provided for in sub-secs. 1, 2 and 4. But as all inferior Courts, created by statute, are bound to adjudicate only on such matters as are clearly within their jurisdiction, the Superior Courts have a general superintendence over all inferior Courts, to see that their functions are restrained within, or are fulfilled according to, the laws and stated rules by which their subordinate jurisdiction is confined and circumscribed; and they may, under their common law or statutory powers, restrain or regulate the jurisdiction of such inferior Courts. In the Voters' List Court, the County Judge has, by virtue of this Act and the *Assessment Act*, the powers of the County and Division Courts, and the Court is therefore, by virtue of such powers, a Court of Record. Whenever power is given to any inferior Judge or tribunal to punish by fine or imprisonment, or both, such Judge or tribunal is a Court of Record.

Mandamus is a judicial process or remedy and extends to the control of all inferior tribunals, corporations, and public officers. It is always granted where there is no other specific legal remedy: *Rex. v. Wyndham*, Cowp. 377. It may be issued against a party for a matter in respect of which he is liable to an action, or to a suit in equity: *Reg. v. Southampton*, 1 B. & S. 5. When a new right has been created by Act of Parliament, the proper method of enforcing it, is by *mandamus* at common law: *Simpson v. Scottish Union etc.*, Com-

which belong to or might be exercised by him in the County Court (*f*).

pany, 1 Hem. & Mil. 618. It was introduced to prevent disorder from a failure of justice, and defect of police. Therefore it ought to be used upon all occasions where the law has established no specific remedy, and where, in justice and good government, there ought to be one ;' Per Lord Mansfield, C. J., *Rex. v. Barker*, 3 Burr. 1265. Where an act is required to be done for the public good, and there has been a wrongful omission to do it, and a serious inconvenience will arise from its not being done, a Superior Court of law has the power of ordering it to be done, under the prerogative writ of *mandamus*: Per Lord Campbell, C. J., in *Reg. v. Mayor of Rochester*, 7 E. & B. 924. The Court will grant a *mandamus* to a County Judge, directing him to inquire into and decide under the Ontario Voters' List Act, whether the name of a voter is improperly omitted from the Voters' List, or whether one person's name should be struck out, and another's inserted in lieu thereof: *Re McCulloch and the Judge of Leeds and Grenville*, 35 U. C. Q. B. 449. And it will be granted, though the Judge's decision in regard to the right of the person to vote is, under the statute, final: *Re Parsons and Toms*, 36 U. C. Q. B. 88. A registering officer may be required by *mandamus* to register the names of voters who are properly entitled to vote: *Davies v. McKeeby*, 5 Nev. 369.

Prohibition: The writ of prohibition lies to an inferior Court having a limited statutory jurisdiction from which there is no appeal, or writ of error: *Thompson v. Ingham*, 14 Q. B. 710; s. c. 14 Jur. 429. It may be issued where, having jurisdiction, the Court has attempted to proceed by rules differing from those which ought to be observed, or where, by the exercise of its jurisdiction, the inferior Court would defeat a legal right. "It must be fully borne in mind that, in the words of the section, 'the decision of the Judge under this [Voters' List] Act in regard to the right of any person to vote, shall be final as regards such persons.' There is

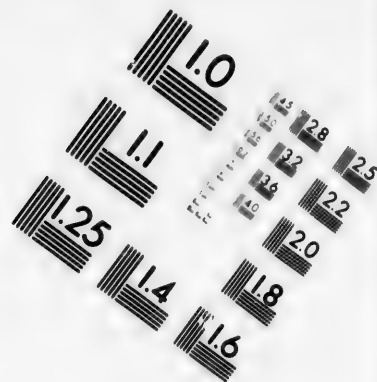
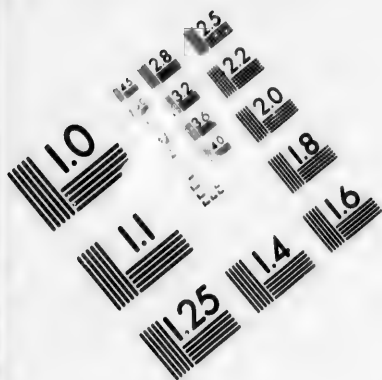
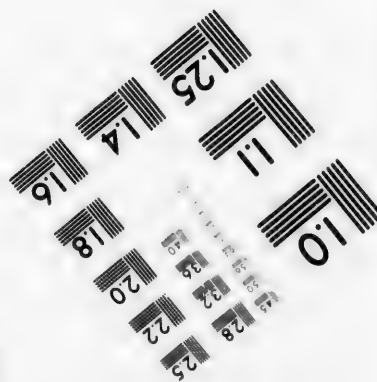
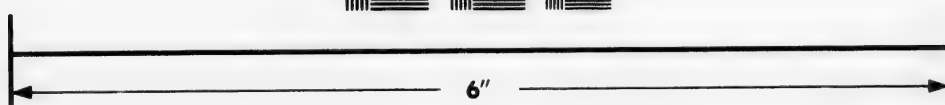
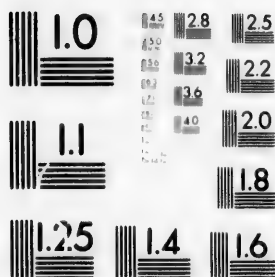


IMAGE EVALUATION TEST TARGET (MT-3)



**Photographic
Sciences
Corporation**

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503



Appoint-
ment of
Constable.

15. The Judge shall have power to appoint some proper person to attend at the sitting of the Court as a Constable or Bailiff; and the

no appeal from his decision provided by the statutes. All the Superior Courts can do is to see that the Judge obeys the law. They can prohibit his proceeding if such proceeding be against the law; and can direct him to proceed to perform any statutable duty imposed on him." Per Hagarty, C. J., in *Re Parsons and Toms, and the Voters' List of Goderich*, 36 U. C. Q. B. 91. Prohibition may issue to prevent a County Judge setting aside Voters' Lists certified by a deputy Judge under a certificate of the municipal Clerk, which duly certified the posting in his office, but falsely certified the sending of copies of the lists to the persons named in the statute: *Re L'Original Voters' Lists*, 9 Pr. R. 425.

Certiorari. The writ of *certiorari* lies to remove from the lower courts, which are created and regulated by statute merely, their proceedings for the purposes of revision; the Queen's Bench, by reason of the great superiority of that Court, may command the inferior Court to send the proceedings before it, up thither, that it may be seen whether it confines itself to its jurisdiction, which, if it exceeds, that Court may correct: *Grenville v. College of Physicians*, 12 Mod. 386, s. c. *sub nom. Groenvelt v. Burwell*, 1 Ld. Raym. 454. Although an Act may provide that no *certiorari*, or any appeal whatsoever, shall be allowed, a *certiorari* may be had where there is an absence of jurisdiction, or where a conviction on its face is defective: *Re Watts*, 5 Ont. Pr. R. 267. *Certiorari* lies to remove the proceedings of any jurisdiction created by Act of Parliament: *Reg. v. Glamorganshire*, 12 Mod. 403, s. c. 1 Ld. Raym. 580: and to review the legislative acts of corporations: *State v. Newark*, 1 Dutcher, 396. And to review a by-law of a municipal board regulating the fees to be paid for tavern licenses: *Re Richardson and the Police Commissioners*, 38 U. C. Q. B. 681.

(f) These powers are defined by Revised Statutes of Ontario, cc. 42 and 43.

duties and powers of such person thereat shall be as nearly as may be the same as those of the Bailiff of a Division Court at a sitting of a Division Court and in reference thereto (g); and the expenses of the person so appointed and attending shall be borne by the Municipality the list for which is the subject of investigation, and shall include such allowance for loss of time, trouble and travelling fees as may be certified by the Judge to be reasonable (h); and the

His duties.

expenses.

(g) These powers and duties are, to exercise the authority of a constable during the actual holding of the Court, with full power to prevent breaches of the peace, riots, or disturbances, within the court room or building in which the Court is held, or in the public streets, &c., within the hearing of the Court; and with or without warrant to arrest all parties so offending, and forthwith to bring them before the nearest J. P., or any judicial officer having power to investigate the matter: (R. S. O. cap. 47, sec. 46). Officers and persons acting in their aid, have special protection under the *Division Court Act*. By sec. 217 of the Act, any person wilfully insulting an officer during his attendance in Court, may be taken into custody by the order of the Judge and fined. However gross the insult to the officer, he should not retort or give word for word, but should at once report the matter to the Judge; and if the officer is assaulted in the execution of his duty he may take the offending party into custody with or without warrant, and bring him before the Judge, to be dealt with according to law. The law is the officer's protection, and the Judge will take care that the officers of his Court are not insulted with impunity. See further as to "Contempt of Court," note (c) p. 52.

(h) This provision is now altered by 41 Vic. cap. 21, sec. 16, *post*. Constables are entitled to \$1.50 per day for attending Court, and 10 cents per mile one way for each mile

amount certified by the Judge shall be paid to such person by the Treasurer of the Municipality upon the production and deposit with him of the Judge's certificate (i).

Clerk to be subject to the summary jurisdiction of the Judge.

16. The Clerk of every Municipality (j) shall be subject to the summary jurisdiction and control of the County Judge in respect to the performance of his duty under this Act, and in respect to every act required to be performed by

actually and necessarily travelled to effect the service of any process or notice, including the service, receipt, and return, thereof.

(i) This certificate would now be as to the number of days the constable attended, and the mileage allowed for services of process or notices; and should state the amount of the compensation payable by the Municipality: 41 Vic. cap. 21, sec. 17.

(j) By sec. 9, the powers and duties of the Clerk are the same as in the case of an appeal from the Court of Revision; and one of such duties of the Clerk, is to act as Clerk of the Judge's Revision Court. See R. S. O. cap. 180, sec. 59, subsec. 6, and note (w) to sec. 9, page 29. He is thus constituted Clerk of the Judge's Court for the revision of the Voters' Lists; and this section makes him subject to the summary jurisdiction of the County Judge. But neither he nor the bailiff or constable has any power to adjourn the Court in case the Judge does not arrive at the time appointed for holding the Revision Court as may be done by the Clerk of the Division Court under R. S. O. cap. 47, sec. 23. The irregular holding of a Revising Barrister's Court has been held to vitiate the votes registered thereat: *Rogers on Elections*, (10th ed.) 541. A Court cannot be adjourned without the presence of the Judge: *Rex v. Middlesex Justices*, 5 B. & Ad. 1113.

such Clerk touching the voters' list, in the same manner as officers of the County Court are to the Court (k); [and the Clerk shall receive ^{Clerk's compensation.} reasonable compensation for the services performed (l)].

17. If the Judge who holds a Court believes ^{Report by Judge as to frauds, &c.} or has good reason to believe that any person or persons have contravened the twenty-seventh (m)

(k) This is in addition to the "summary jurisdiction" of the Judge which may be invoked on the application of the Clerk of the Peace, or "any person entitled to be named as an elector," as provided in sec. 24 *post*. See further, note (o) p. 68.

(l) The sentence in brackets was varied by 41 Vic. cap. 21, sec. 15, and was repealed by 42 Vic. cap. 3, sec. 7. By the first mentioned section, the compensation of the Clerk was fixed at \$3 per day for attending Court, and his actual and reasonable disbursements, in cases where the by-law or contract, under which he is employed, provided no compensation for his services under the Act.

(m) This section prohibits transfers of property for the purpose of creating votes. The offence is defined to be "*occasionality*," or "*splitting votes*," which means a fraud on the law of Parliament, in the same manner, and upon the same principle, as in ordinary cases is included in the term fraud on the common law. An "occasional voter" is defined to be "one whose qualification, whether from estate, office, or other cause, is conferred, or taken, for the purpose of voting at an election for a particular interest:" 1 *Stephens on Law Elections*, 416. The County Judge is also, if the facts so warrant, to report any Assessor who wilfully and improperly assesses or omits to assess parties, so as to give, or deprive of, a right of voting, contrary to the statute. See note (v) to sec. 27, p. 91.

or thirtieth (n) sections of this Act, or that frauds in respect to the assessment or the voters' lists have prevailed extensively in the Municipality (o), it shall be his duty to report the same

(n) This section relates to Assessors wilfully assessing a person at too high an amount with intent to give such person an apparent right to vote, or at too low an amount with intent to deprive any person of his right to vote.

(o) "Electioneering consciences are very elastic. The franchise opens a boundless field for the manufacture of votes : " *Per* Sergeant Cox, Ex M. P. for Taunton in Cox and Grady on *Registration and Elections*, p. xli.) "I found that a good deal of perjury was committed in the election cases that came before me. There were a good many witnesses whom I did not believe, and who I thought were wilfully stating what was not true." *Per* Blackburn, J., *Committee on Parliamentary and Municipal Elections* (1869) 520. If the Judge has good reasons to believe that frauds in respect of the addition or omission of names have prevailed extensively in the Municipality, it becomes his duty to report the facts to the Government. The object of this section is to enable the Crown, on the report of the Judge, to take prompt and effective measures for the prosecution of the offenders against the laws affecting the rights of electors to their Parliamentary franchises, and thus impose penal restraints upon the ingenuity of election agents and fraudulent assessors. A duty similar in its object, is cast upon the Election Judges by the *Controverted Elections Act*, sec. 58, to report to Parliament respecting corrupt practices, and the agents guilty of such corrupt practices at elections; on which Blackburn, J., observed: "The enactment provides that, on the case being finished, the evidence should be laid before the Attorney-General to consider whether he would prosecute or not:" *Bewdley*, 1 O. & H. 176. See also the evidence of Willes, J., before the Committee on Parliamentary and Municipal Elections, (1869), 442.

to the Provincial Secretary, with such particulars as to names and facts as he may think proper (*p*).

18. The Judge shall have power to amend^{Amendment.} any notice or other proceeding upon such terms as he may think proper (*q*).

(*p*) It is here made the duty of the Judge to report any person who has made, executed, accepted, or become a party to any lease, deed, or other instrument, or become a party to any verbal arrangement whereby a colorable interest in any land, house, or tenement is conferred in order to qualify any person to vote.

(*q*) The legislative policy as to amendments is contained in the *Administration of Justice Act*, sec. 8, and the *Common Law Procedure Act* sec. 270, by which the Judge is empowered in all suits and other proceedings to make all such amendments as may seem necessary for the advancement of justice, the prevention and redress of fraud, the determining of the rights and interests of the respective parties, and of the real question in controversy between them, and best calculated to secure the giving of judgment according to the very right and justice of the case; and such amendments may be made whether the necessity for the same is occasioned by the defect, error, act, default, or neglect of the party applying to amend. By the Ontario Judicature Act, 1881, rule 178, the Court may allow either party such amendments as may be necessary for determining the real questions in controversy between them. And by sec. 17 A. J. Act, (cap. 49), "No proceeding at law or in equity shall be defeated by any formal objection,"—which is the same as rule lxiii. of the election rules; and is in effect similar to sec. 82 of 32 & 33 Vic. cap. 71, (English Bankruptcy Act), which provides that "no proceeding shall be invalidated by any formal defect, or by any irregularity:" *In re Buckland*, L. R. 15 Eq. 221; *Revell v. Blake*, L. R. 7 C. P. 300; *Regina v. Widdop*, L. R. 2 C. C. 3. The former technical system of pleading was

Abandonment by Appellant and intervention of some other.

19. If any appellant or complainant entitled

carried on at the expense of the client whose rights were pleaded into such a maze that he was often obliged to give them up: *Grant v. Eddy*, 21 Gr. 577. During the earlier Revision Courts under the Imperial Registration Acts, every possible technical objection appears to have been taken to the notices which the Acts prescribed should be given in respect to objections to voters, or claims to be registered. And many of the cases seem to indicate that the Revising Barristers and Courts were more astute to give effect to technicalities,—to show how blunders could be made insuperable to defeat the law, and the right to the franchise,—than to adjudicate upon the true right of the person whose vote was claimed or objected to. Fortunately for the interests of justice, the reported decisions of our Courts may be referred to as giving truer law to aid County Judges in sweeping aside technical objections, or asserted blunders, so as to get at the very *right* and the very *justice* of every claim or objection. The franchise is not to be lost to any one who is really entitled to vote, if his right can be maintained in a reasonable view of the requirements of the Act: *Reg. ex. rel. Chambers v. Allison*, 1 Can. L. J. 244. The inclination of the Courts is in every way to favour the franchise: *Reg. ex. rel. Ford v. Cottingham*, 1 Can. L. J. 214. Technical objections as to matters of form before a County Judge on the revision of the voters' lists ought not to prevail, where no one can be misled or injured by the alleged errors; and when the County Judge gives effect to such objections a mandamus will be ordered: *Re McCulloch and the Judge of Leeds and Grenville*, 35 U. C. Q. B. 449. Where a voter's qualification was not sufficient for indentification: *Held*, amendable: *Howitt v. Stephens*, 5 C. B. N. S. 30. Where the description was "dwelling house," instead of "house:" *Held*, amendable by striking out "dwelling:" *Townsend v. Marylebone*, L. R. 7 C. P. 143. Where an occupier claimed a qualification for a "house:" *Held*, amendable by adding "occupier of:" *Ford v. Boon*, *Ibid.* 150. Where the description describes that which may or may not be a qualification, the Court will not

to appeal dies (r) or abandons his appeal or com-

be astute to give it the latter effect: *Sherwin v. Whyman*, L. R. 9 C. P. 243. Where it is a misdescription, it is not amendable: *Nicholls v. Bulwer*, L. R. 6 C. P. 281. "With regard to the power of amendment, I am much indisposed to construe it so as to encourage laxity; but I think it would make it almost nugatory to hold that the Revising Barrister had not power to amend or correct mistakes. I am well aware of the strong feelings which are excited in matters of this sort. Unless kept under proper restraint, the agents on both sides will be apt to fall into a degree of laxity which I for one do not feel inclined to encourage." *Per* Lord Coleridge, C. J., in *Bollen v. Southall*, 15 Q. B. D. 466. The intention of the Act of Parliament must have been that the power of amendment should be as large as is consistent with ordinary rules of construction, and as is consistent with a rule which I ventured to enunciate, namely,—that the balance is to be held fairly between an objector and a person claiming to vote: *Per* Lord Esher, M. R., in *Dashwood v. Ayles*, 16 Q. B. D. 298. In cases where the lapse of time will bar the right, the Court will amend: *Cowburn v. Wearing*, 9 Ex. 207; as in the case of a writ of summons so as to prevent a bar of the action by the Statute of Limitations: *Horton v. Stamford*, 3 Tyr. 869; or where the plaintiff's remedy would otherwise be entirely lost: *Partridge v. Wellbank*, 1 M. & W. 316. "My practice has always been to give leave to amend, unless satisfied that the party applying was acting *male fide*; or that, by his blunder, he had done some injury to his apponent which could not be compensated for by costs or otherwise: *Per* Bramwell, L. J., in *Tildesley v. Harper*, 10 Ch. D. 393. Under the comprehensive powers of the 18th section of the Voters' Lists Act, the Judge can amend the notice of appeal so as to make it accord with the true state of facts: *Per* Moss, C. J. A., *Opinions on Voters' Lists Act*, Case 6. And such notice of appeal should be amended so as to prevent a voter being disfranchised: *Ibid.* Case 8.

(r) The maxim, "a personal right of action dies with the

plaint (s), or having been on the alphabetical list made and posted by the Clerk as aforesaid is afterwards found not to be entitled to be an

person," applies to cases under this Act : See *Nettleton v. Burrell*, 8 Scott N. R. 738 ; *Pring v. Escourt*, 4 C. B. 71. " It may be the notice would fall if the objector were dead : " *Per Byles, J.*, in *Proudfoot v. Barnes*, L. R. 2 C. P. 94. See also *Callington*, 1 Luders, 453, s. c., 38 Com. Jour. 481 ; *Milborn Port*, 16 Com. Jour. 121 ; s. c., 1 Luders, 456.

(s) Prior to 41 & 42 Vic. cap. 26 (Imp.) an objector could not withdraw. One P., after giving the required notices of objection, published in the papers that the objections were withdrawn, as having been signed by him under false representations. Before the holding of the Revision Court he sent another notice to each objectee that the objections were not withdrawn, and that it would be necessary for him to attend and answer the objections. At the Revision Court the notices were duly proved, but, on proof of the published notices of withdrawal, the Revising Barrister held that the objections had been withdrawn : *Held*, that the Revising Barrister was wrong, and that the objector could not withdraw the notices : *Proudfoot v. Barnes*, L. R. 2 C. P. 88. The right of voting and of objecting are matters in which the interests of the public are greatly concerned. The objector and the person objected to certainly stand in some respects in the position of litigant parties, but I think it would be to the last degree dangerous to the interests of the public to allow the objection to be withdrawn at the pleasure of the objector : *Per Erle, C.J.*, *Ibid.* When the person who gave the notice assumed the office of objector he placed himself in the position of a public officer, and cannot of his own mere will divest himself of it. He gives a notice of objection, and waits until it is too late for any other person to object, and then gives notice that he withdraws the objection. It would be opening the door to fraud to allow this device to prevail : *Per Byles, J.*, *Ibid.* The right to object

appellant (*t*), the Judge may, if he thinks proper, allow any other person who might have been an appellant or complainant (*u*) to intervene and

is not a mere private privilege, but a matter of public concern: *Per Keating, J., Ibid.*

(*t*) See note (*v*) p. 32.

(*u*) "Any other person who might have been an appellant or complainant," *i. e.*, "a voter or person entitled to be a voter," (sec. 9.) The proper person to bring an action is the person whose right has been violated, a rule not applicable merely to the procedure of this country, but one affecting all sound procedure: *Per Willes, J., in Gray v. Pearson, L. R. 5 C. P. 574.* When a statute provides that a "person" shall do a particular act, it is *prima facie*, natural and reasonable to understand the Legislature as intending such persons, as by the use of proper means, may be able to fulfil the condition; and not those who, called "persons" in law, have no capacity to do so at any time, by any means, or under any circumstances: *Ibid.* "Whenever you see that the object of the Act requires that the word 'person' shall have the more extended, or the less extended, sense, then, whichever sense it requires, you should apply the words in that sense, and construe the Act accordingly." *Per Lord Blackburn in Pharmaceutical Society v. London, etc., Supply Association, 5 App. Cas. 857.* A relator in a *quo warranto* case is not necessarily bound to prove his interest, unless the respondent question it, by denying it, and showing, or at least alleging, some ground for his denial; *Reg. ex rel Bartliffe v. O'Rielly, 8 U. C. Q. B. 617; s. c. Har. & Hod. Mun. R. 459.* Where, on an election petition alleging that the election was held on illegal voters' lists, the election Judge found the fact as alleged, but also held that the petitioners, owing to the illegal lists, were not qualified to petition. On appeal, the judgment was reversed, and it was *Held*, that an election conducted on illegal voters' lists will be set aside, notwithstanding that the petitioners fail to

prosecute such appeal or complaint, upon such terms as the Judge may think just (v).

Costs occasioned by errors may be ordered to be paid by guilty parties.

20. (1) In case of errors being found in the said voters' list on the said revision thereof, whether such errors are in the omission of names, the inaccurate entry of names, or the entry of the names of persons not entitled to

prove themselves qualified to petition: *Montreal Centre*, 18 L. C. J. 323. It is sufficient if the notice is given, while the objector is duly qualified to give it, and within the period allowed for giving notice: *Jones v. Jones*, L. R. 1 C. P. 140. See further, note (w) p. 32.

(v) This is similar to the right given to parties in Election cases under the *Controverted Elections Act*, ss. 82-93. In such cases, the application for the withdrawal of the petition must be accompanied by affidavits of the petitioner and respondent, to the effect that it is not the result of a corrupt arrangement. Where such affidavits were filed, and the prescribed notice was given, the Judge held he was bound to allow the withdrawal, although electors had memorialized against the withdrawal, but did not ask to be substituted for the petitioners: *Stockport Election*, 19 L. T. N. S. 743: see also *Brecon Election*, 2 O. & H. 33; *Durham Election*, 31 L. T. N. S. 321. The election rules (Nos. liii. and liv.) require five days' notice of the petitioner's intention to withdraw his petition, so that any qualified person may intervene and apply to be admitted to prosecute the petition. No rules regulating the practice under this Act, have been prepared by the Board of County Judges under sec. 32. By R. S. O. cap. 49, sec. 9, the Courts have the power to appoint a person to represent the estate of a deceased litigant, or to allow the action to proceed in the absence of a personal representative. See also 48 Vic. cap. 13, sec. 11.

vote (*w*), if it appears to the Judge (*x*) that the Assessor was blameable for any of the said

(*w*) This gives the County Judge very large powers in respect of the costs of proceedings before him, and for which either the Assessor or Clerk was "blameable." But though the word "blameable" is not used in respect of errors of the Court of Revision, it may be assumed that the Act means "wilful errors." The maxim, *omnia præsumuntur ritè et solenniter esse acta, donec probetur in contrarium*, applies to the acts of a Court, and to acts which require the concurrence of official persons : *Bank of United States v. Dandridge*, 12 Wheat. 70. The general presumptions of law are, that a Court does nothing causelessly and maliciously : that the decisions of a Court of competent jurisdiction are well founded, and their judgments regular ; and that facts, without proof of which the verdict could not have been found, have been proved at the trial ; and that the records of the Court have been correctly made according to the rule, *res judicata pro veritate accipitur* : Co. Litt. 103a ; Broom's *Legal Maxims*, 945.

(*x*) Judicial power, as contradistinguished from the power of the law, has no existence. When Courts are said to exercise a discretion, it is a mere legal discretion to be exercised in discovering the course prescribed by the law ; and when that is discovered it is the duty of the Court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the Judge, but always for the purpose of giving effect to the will of the Legislature, or in other words, to the will of the law : *Osborne v. Bank of the United States*, 9 Wheat. 866. "Discretion when applied to a Court of Justice means sound discretion guided by law. It must be governed by rule, not by humor ; it must not be arbitrary, vague, or fanciful, but legal and regular." Per Lord Mansfield, C. J., in *Rex v. Wilkes*, 4 Burr. 2539.

errors (*y*), the Judge shall order (Form 18) the Assessor, either alone or jointly with any other person, to pay all costs occasioned by the same (*z*); and in case of errors for which the Clerk was to blame, the Clerk, either alone or jointly with any other person, shall be charged with the costs (*a*); and in case of errors of the Court of Revision, the Municipality shall, either alone or jointly with any person, pay the costs (*b*),

(*y*) In giving judicial power to effect prejudicially the rights of person or property, a statute would be understood as silently implying, when it did not expressly provide the condition or qualification, that the power was to be exercised in accordance with the rule of natural justice, that a person liable to be prejudicially affected should first have an opportunity of defending himself: *Maxwell on Statutes*, 325. "As a general rule no man's property or liberty even in a judicial proceeding, however large the power given to the Courts, can be brought in jeopardy, so that he may be said to be bound by it unless he has had the opportunity of being heard." Per Richards, C.J., in *Nicholls v. Cumming*, 1 S. C. R. 408.

(*z*) This liability for "costs" is in addition to the penalties mentioned in section 30. See also the *Assessment Act*, secs. 189-194; and the assessor's oath, sec. 42 of the same Act.

(*a*) In addition to the liability for the costs which may be awarded against the Clerk by this section, he is also liable to the costs of the summary proceedings authorized by sec. 24 *post*; and also to the penalties provided for by secs. 25 and 26 *post*.

(*b*) A municipal corporation is responsible for the acts of its servants and officers upon the same principle and to the same extent as a private individual: *Lewis v. Toronto*, 39 U. C. Q. B. 348. See further note, (*w*) p. 79.

subject to any claim which the Municipality may justly have against the guilty parties (c); or the Judge may order the Assessor, Clerk or Municipality in any such case, to pay the costs, if any party fails to recover the same from any other party named and ordered to pay the same; and, in all cases not herein provided for, the costs shall be in the discretion of the Judge (d).

(c) A municipal council may maintain an action for damages against former members of such council for unlawful conduct, or wrongful acts whereby the costs of executing a financial commission under the statute were unduly increased. Such an action lies where the damage is shown to have resulted naturally and directly from the conduct complained of: *East Nissouri v. Horseman*, 16 U. C. Q. B., 556.

(d) Costs are not recoverable by common law, but by virtue of statutes: *Garnett v. Bradley*, 3 App. Cas. 944. In proceedings under statutes it is the settled rule that no costs can be awarded except such as are authorized by the particular Act. A proceeding under a statute is not a proceeding in an action: *Re Charity Schools of St. Dunstan*, L. R. 12 Eq. 537. No one can be ordered to pay costs on an *ex parte* application: *Nokes v. Gibbon*, 3 Jur. N. S. 282. Costs are usually given when the case is so clear that the Court does not call upon the other side: *Allen v. House*, 7 M. & Gr. 157; *Passingham v. Pitty*, 17 C. B. 315. But where there is a reasonably fit case for argument, the Court will not give costs: *Croucher v. Browne*, 2 C. B. 97; *Collier v. King*, 11 C. B. N. S. 478. When the decision in appeal is adverse to the claim of franchise the Court will grant or withhold costs according as there was reasonable ground for the claim; but when the decision against a party supports the franchise, costs will be given: *Clark v. St. Mary, Bury St. Edmunds*, 1 C. B. N. S. 23. Parties are not to be discouraged from bringing cases of disqualification under the notice of the proper

Division
Court costs
only al-
lowed.

(2) No costs shall be allowed on any proceeding under this Act, other or higher than would be allowed in the Division Court under the lowest scale of costs in actions therein (e).

Liability of
appellant
for costs.

(3) The only costs to which an appellant shall be liable shall be the witness fees, unless in a case of bad faith on his part (f).

tribunals by the peril of having to lose the costs necessarily incurred: *Reg. ex rel. Rollo v. Beard*, 3 Pr. R. 357. The tendency of modern decisions is not to compel a party to pay costs, unless it be shown that he participated in the improper conduct for which the election is set aside: *Reg. ex rel. Davis v. Wilson*, 3 U. C. L. J. 165. A relator having acted in good faith in bringing forward the matter was not amerced in costs, though unsuccessful: *Reg. ex rel. Crozier v. Taylor*, 6 U. C. L. J. 165. By 41 & 42 Vic. cap. 26 (Imp.), the Revising Barrister may order costs not exceeding 40s., unless where an objection is reasonably made, or unless the objection is withdrawn, or unless for some other special reason he otherwise determines, (sec. 27, sub-sec. 3). The fees for professional services in Registration Courts are not taxable under the Attorneys' Act: *Re Andrew*, 10 Jur. 1145.

(e) The costs of any action or proceeding in the Division Court are in the discretion of the Judge. (R. S. O. cap. 47, sec. 154). A form of a bill of costs on a claim of \$20 will be found in *Sinclair's Division Court Acts* (1879), 329. When as in a multitude of Acts something is left to be done according to the discretion of the justices or other authorities, on whom the power of doing it is conferred, the discretion must be exercised honestly and in the spirit of the Act, otherwise the act done would not fall within the statute: *Maxwell on Statutes*, 100.

(f) The effect of this is to limit the discretion given to the County Judge by sub-sec. 1, as to the costs of "appellants." The question whether a plaintiff had "reasonable ground" or "reasonable cause" for adding a party as a defendant, in

21. The payment of any costs ordered to be paid by the Judge may be enforced by an execution (Form 19) against goods and chattels, to be issued from any County Court upon filing therein the order of the Judge, and an affidavit shewing the amount at which such costs were taxed and the non-payment thereof (*g*).

Costs, payment of, how enforced.

22. If any person not assessed (*h*), or not sufficiently assessed (*i*) is found entitled to vote (*j*), the Municipality shall be entitled to

Persons whose names omitted from roll

an action for misrepresentation, so as to affect the question of costs, is a mixed question, compounded of facts, and a doubtful point of law: *Swift v. Jewsbury*, L. R. 8 Q. B. 560.

(*g*) As the affidavit must show "non-payment," it may be inferred that a previous demand of the costs is necessary.

(*h*) "Person not assessed." This covers the complaint (1) under sec. 8, sub-sec. 1, "name of voter omitted from the list," note (*y*); (2) under sub-sec. 3, "person to whom he (the person originally named on the Voters' List) has transferred the property," notes (*g*) and (*h*); (3) under sub-sec. 4, "person liable to be rated," notes (*j*) and (*l*); (4) under sub-sec. 5, "a landholder's son or wage-earner entitled to be assessed," note (*n*). So in appeals to the Court of Revision (R. S. O. cap. 180, sec. 56) "person wrongfully omitted from the roll."

(*i*) "Person not sufficiently assessed," *i.e.*, a person "undischarged by the assessor in the roll." (R. S. O. cap. 180, sec. 56). See note (*b*) to sec. 8, p. 35, *ante*. Where a tenant appeals to have his assessment increased so as to give him the right to vote, his landlord as a person appealed against, should have notice served on him: *Per Moss, C. J. A., Opinions on Voters' Lists Act, Case 3.* (Appendix.)

(*j*) The franchise is annexed to an interest in real property, and taxation in respect thereof. *Per Moss, C. J. A.,*

and inserted on revision liable to pay taxes.

Judge's order.

recover taxes from him, and to enforce payment thereof by the same means and in the same manner as if he had been assessed on the roll for the amount found by the Judge (*k*); and the Judge shall make an order (Form 20), setting forth the names of the persons so liable, and the sum for which each person should have been assessed, and the land or other property in respect of which the liability exists; and such order shall be transmitted to the Clerk of the Municipality, and shall have the same effect as

Re Lincoln, 2 App. R. 335. A curé occupying the presbytery is not qualified to be entered on the Electoral List, as the presbytery is not a taxable property; for it is on taxable property only the voting qualification is based: *Kamarouska Electoral Lists*, 3 Q. L. R. 308. "An adjudication that the persons named on the list are entitled to vote is not within the jurisdiction of the County Judge. He is to revise the list by adding the names omitted, correcting those wrongly stated, or striking out those improperly there, because those omitted have assessable property, or assessed income; or because those inserted have it to a greater or smaller amount than stated, or have none. He adjudicates as to their property, or income, and in respect of that he corrects the list. The right to vote is the legal consequence only, and not the subject, of the adjudication." *Per Patterson, J. A.*, in *Re Lincoln (Borrowman's Case)*, 2 App. R. 316.

(*k*) The process of assessment is in the nature of a judicial proceeding, and it is as much the essence of the whole proceeding that the party should have an opportunity to object, and he should have notice to enable him to do so, as it is in more formal proceedings, where, according to the usual and natural course of proceeding, the party to be affected is cited in the first instance: *Per Strong, J.*, in *Nicholls v. Cumming*, 1 Sup. Ct. Can. 427.

if the said particulars had been inserted in the roll (*l*).

23. The times appointed for the performance, by the Clerk of the Municipality, of the duties required of him by this Act, shall be directory only to the said Clerk (*m*); and the non-performance by him of any of the said duties within the times appointed, shall not render null, void or inoperative any of the lists in this Act mentioned (*n*). Failure of Clerk to perform duties not to vitiate list.

(*l*) The effect of this provision is to make the Judge's order a Supplementary Assessment Roll, for the purposes of Municipal Taxation. Where the County Judge, under the same clause in the Voters' List Act of 1874 (sec. 11), added a number of names to the Voters' List, which were not found on the last revised Assessment Roll, nor upon any supplementary Assessment Roll, or Judge's order, shewing such persons to have been assessed for any property or value; *Held*, that the added list was a nullity: *Lincoln (Borrowman's Case)* 2 App. R. 316. Later amendments of the Act vary this ruling. See note (*k*) p. 40.

(*m*) This section was first enacted in 1859, 22 Vic. cap. 10, sec. 1. See also C. S. C. cap. 6, sec. 6, sub-sec. 3. So far as the public interests are concerned, the Act may be looked upon as directory: *Rex v. Norwich*, 1 B. & Ad. 310; *Nickle v. Douglas*, 35 Q. B. 127. But in so far as the officer, whose duty it is made to do the acts within a limited time, is concerned, the Act may be construed as imperative: *Hunt v. Hibbs*, 5 H. & N. 126. "The general rule is, that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment must be obeyed or fulfilled substantially:" *Per* Lord Coleridge, C. J., in *Woodward v. Sarsons*, L. R. 10 C. P. 746.

(*n*) The Clerk is an officer of the Judge's Voters' List Court, and in some cases his neglect may be held to be the

Provision
in case
Clerk of
Municipality
fails to perform
duties.

24. (1) In case the Clerk of any Municipality fails to perform any of the duties aforesaid, the Clerk of the Peace (o) shall forthwith apply

act of the Court, as in analogous cases at common law. It is in accordance with the principles of the common law, irrespective of the statute 17 Car. II. cap. 8, that whenever the delay is the act of the Court, and not that of the party, the delay shall not prejudice, unless it can be shown that the other party would be prejudiced: Broom's *Legal Maxims*, 87. Where the delay in amending a writ of summons, within the statutory period, is the act of the officer of the Court, the writ will be amended *nunc pro tunc*: *Nazer v. Wade*, 1 B. & S. 728; *Evans v. Jones*, 2 B. & S. 45. But see *Grace v. Clinch*, 5 Q. B. 606, s. c., 3 G. & D. 591; *Llandebig v. Llandyfrydog*, 15 L. J. M. C. 92. "We cannot suppose that the Legislature intended that if the Clerk omitted any of those things which he is directed to do,—such as making out the list alphabetically, or omitting to post up a copy in his office, or transmitting a less number of copies to some of the parties than the Act requires—that the Judge could not proceed to revise the list on complaint being made under the statute. All the proceedings relative to the Clerk are merely directory with a view to notifying the electors of the state of the lists; and when, as in this case, such notification was effectually given, and the plain object and general intention of the statute has been in fact complied with, it would be the duty of the Judge to proceed with the revising." *Per Morrison, J., Revision of Goderich Voters' Lists*, 1874, 6 Pr. R. 215.

(o) This vests a right of action for any neglect of the Clerk, in a person who has only official duties in connection with the Voters' List, and who has no personal right of action owing to his being disqualified from voting by the Election Act, sec. 4. Where a person would have at common law a right of action grounded upon an interference with a given public right, where such interference has

(Form 21) summarily to the County Judge or the Junior or acting Judge of the County Court for the County within which such Municipality is situate, to enforce the performance of the same.

(2) The application may also be made by any person entitled to be named as an elector on the list in respect of which the application is made (p). Elector may apply.

(3) The Judge shall, on such application, require (Form 22) the Clerk of the Municipality, and any other person he sees fit, to appear before him and produce the assessment roll, and any documents relating thereto, or to the list in respect to which the application is made, and Judge may require Clerk or other person to appear and submit to examination, etc.

operated to his individual injury, if the public right is taken away by statute, and vested in an official body to be exercised and controlled for a specified object, then the right being thus resigned by the public, the individual right of action is lost also: *Kearns v. Cordwainer's Company*, 6 C. B. N. S. 388.

(p) It is essential to an action for tort, that the act complained of should be legally wrongful as regards the party complaining; i. e., it must prejudicially affect him in his legal right: *Rogers v. Rajendro Dutt*, 13 Moore, P.C. 20. Whenever one man does an act which would operate in derogation of the rights of another, he is liable to an action without particular damage at the suit of the person whose right may be affected: *Harrop v. Hirst*, L. R. 4 Ex. 43. On an action brought by a person on the register against a Returning Officer who on a scrutiny found him not entitled to vote: *Held*, that having lost his right to vote he had no right of action: *Pryce v. Belchers*, 4 C. B. 867.

to submit to such examination on oath as may be required of him or them, and the Judge shall thereupon make such orders and give such directions as he may deem necessary or proper for the purposes aforesaid (q).

Liability of
Clerk for
costs.

(4) The Clerk of the Municipality shall be personally liable for and shall pay the costs of the proceedings, unless on some special grounds the Judge shall see fit to order otherwise, and in such special case the costs shall be in the discretion of the Judge (r).

(q) By the Parliamentary Electors' Registration Act, (31 & 32 Vic. c. 58), (Imp.), the Revising Barrister has power (sec. 29), to summon the overseers or other persons having the custody of the rate-roll to produce the same before him; and by the Registration of Voters' Act, (6 Vic. c. 18,) the Revising Barrister has power (sec. 50) to impose a fine of not less than £1, nor exceeding £5, on any assessor, collector, or overseer, wilfully refusing or neglecting to attend when summoned; and also to impose a similar fine for any wilful refusal or neglect to make out the list; or to insert the name of any person claiming to be a voter; or to omit the name of any person duly qualified; or for inserting the name of any person not duly qualified; or for neglecting to publish any notice or list, at the time and in the manner required by the Act, &c. (s. 51). This is in addition to an action for penalties. Under this Act, and the *Voters' Lists Finality Act*, similar offences render the guilty officers subject to penalties of \$200 or \$2,000, which may be sued for "in any Court having jurisdiction to the amount of the penalty in cases of simple contract:" (R. S. O. cap. 8, sec. 3, sub-sec. 29). And may be tried by a Judge without a jury.

(r) See notes (d) p. 81, and (e) p. 82.

(5) Such proceedings and such order of the Judge shall not in anywise exonerate or release the Clerk from liability to the penalty herein-after imposed (s). Judge's order not to release Clerk from penalty.

25. If any Clerk of a Municipality omits, neglects or refuses to complete the voters' lists, or to perform any of the duties hereinbefore required of him for his Municipality, such Clerk, for each such omission, neglect or refusal, shall incur a penalty of \$200 (t). Penalty on Clerk for neglect, etc.

(s) Where a statute gives a summary remedy against a corporate officer who refuses to comply with the provisions of the Act, such remedy does not take away the right of action which the corporation has against such officer for the breach of duty complained of: *Mayor of Lichfield v. Simpson*, 8 Q. B. 65. When a statute inflicts a penalty for not doing an act provided for, the penalty enacted implies that there is a legal compulsion to do the act in question: *Redpath v. Allan*, L. R. 4 P. C. 511.

(t) The law may be severe in laying so high a penalty on an omission; but an omission from incapacity, or inability is one thing, an omission from negligence is another. The neglect of doing a particular act is an offence; a mere omission to do it, as in the case of prevention by superior force, is not an offence: *Per Lord Denman, C.J., in King v. Burrell*, 4 Jur. 111 s. c. 12 A. & E. 467. Neglect is an omission to do that which it was in his power and within his duty to do, without having any lawful excuse for the omission. Forgetfulness or carelessness is certainly not a sufficient excuse: *Per Coleridge, J., Ibid.* Mistake of duty and honest intentions will not excuse the offender: *Amy v. Supervisors*, 1 Wall. 136. When an assessor has reasonable notice before he returns his roll, that a change in occupancy has been made, and he omits to make the necessary changes, it may properly be considered that he has wrongfully

Penalty
for wil-
fully falsi-
fying lists.

26. If any Clerk of a Municipality, or Clerk of the Peace, or any other person, wilfully makes any alteration, omission or insertion, or in any way wilfully falsifies any such certified list or copy, or permits the same to be done, every such person shall incur a penalty of \$2000 (u).

refused to insert the proper name on the roll: *Per Richards, C. J., in Re McCulloch and the Judge of Leeds and Grenville, 35 U. C. Q. B. 452.* Before the commencement of an action for a penalty against a registration officer who is required to make out burgess lists, no previous notice of action is necessary: *King v. Burrell, 12 A. & E. 460.* An information against municipal officers for refusing to put a voter's name on the list should allege that they knew of his right to vote: *State v. Daniels, 44 N. H. 383.*

(u) In an action against a registration officer (overseer) for a penalty for wilfully inserting the names of certain persons on the list who were not entitled to vote, it is not essential that such officer should have acted from a corrupt motive; it is sufficient if he has disobeyed wilfully the provisions of the Act: *Tarr v. McGahey, 7 Car. & P. 389.* In charging the jury the learned Judge said; "With respect to confusion occurring in the making out of the list, I confess I do not see the slightest occasion for any. It is like a complicated machine, which confuses at a single view, but may not be at all complex in its details. It is true that only three instances are selected out of a long list of names; but there is distinct evidence that the defendant disregarded the notice given to him by the witnesses, that these three persons had no right to vote. It is the duty of the overseer to make out the list; and he may ask such questions as he pleases of the collectors of assessed taxes, to enable him to do so. But if his notice is distinctly drawn to particular names, he has the opportunity of correcting his list at the time, and he is bound to do so. [The names were introduced improperly:] *Per Lord Denman, C. J., Ibid.* The jury

27. No person shall make, execute, accept or become a party to any lease, deed or other instrument, or become a party to any verbal arrangement, whereby a colourable interest in any land, house or tenement is conferred, in order to qualify any person to vote at an election (v); and any person violating the provisions

Colorable transfer of property in order to confer vote.

found a verdict for the plaintiffs, £50. The introduction of the term "wilful" would imply a request; for unless a person has been requested, and has refused to act, I do not see clearly how his neglect could be wilful: *Per Williams, J., in King v. Burrell*, 4 Jur. 1111.

(v) Conveyances made for the purpose of qualifying votes at an election, by splitting freeholds, are a fraud on the law of Parliament, on the same principle as in ordinary cases is included in the term fraud on the common law: 1 *Stephens on Elections*, 416. Conveyances and agreements made for the purpose of giving a temporary qualification, being against public policy, are void: *Langlois v. Baby*, 10 Gr. 358. Such conveyances must fall within the same category as a conveyance to enable a man to sit in Parliament, but intended to convey no beneficial interest: *Per Spragge, V. C., Ibid.* What is against public law is against public policy: *Per Van-Koughnet, C., Ibid*, 11 Gr. 1. See also, *Emes v. Barber*, 15 Gr. 679. Conveyances which are not meant to convey a real interest in land, but only a pretended and fictitious interest, and made only for the purpose of multiplying voices at an election, are void: *Alexander v. Newman*, 2 C. B. 122; s. c. 10 Jur. 313. The Act 7 & 8 Wm. III. cap. 25, sec. 7 (Lord Somers's Act), provides that all conveyances of any messuages, lands, tenements, or hereditaments, in order to multiply voices, or to split or divide the interest in any house or lands among several persons, to enable them to vote at elections to serve in Parliament, are void and of none effect. See also, 10 Anne, 23; 18 Geo. II. cap. 18, sec. 5. It was thought beneficial, where such baneful practices were daily

of this section, besides being liable to any other penalty prescribed in that behalf, shall incur a

practised, to promulgate the doctrine of the common law to sheriffs and other officers to whom the duty of conducting an election was trusted, and to give it the additional weight and solemnity of a legislative declaration: *Per Tindal, C. J. Ibid.* 315. Before the Act Lord Somers held that the making of votes by splitting freeholds by fraudulent conveyances, or conveyances not made *bona fide* on good consideration, were void by the common law: *Onslow v. Bailiff of Haslemore*, cited 10 Jur. 314. It is further defined to be where a qualification, whether from estate, office, or other cause, is conferred or taken, for the purpose of voting at an election for a particular candidate or interest: 1 *Stephens on Elections*, 416. It is an offence at common law known as "occasionality," or "splitting votes," and may be of two kinds: (1) That which does not contain what is called legal fraud, yet is deemed to be a fraud upon the law of Parliament, viz., where that to which the right of voting is attached is obtained sincerely and *bona fide*, but upon the eve of a particular election, and for the express and only purpose of enabling the person who acquires it to give a vote at that election. (2) The second kind of occasionality is so connected with fraud that they are convertible terms. It consists of an illusory and pretended grant, of that which in fact never passes from one party to the other, for the purpose of voting merely: *Ibid.* 417; *Rogers on Elections*, 177. A fraudulent conveyance, made for the mere purpose of conferring a vote, is void only to the extent of preventing the right of voting from being acquired; but is valid and effectual, as between the parties, to pass the interest: *Phillpotts v. Phillpotts*, 10 C. B. 85. The executors of a grantor were estopped from pleading that the deed was made for the purpose of multiplying votes: *Ibid.* Where a claimant admitted that he had given no consideration for the property, and that the deed had been prepared by an electioneering agent: *Held*, that the conveyance was colorable, and did not confer a qualifica-

penalty of \$100; and any person who induces or attempts to induce another to commit an

tion: *Re Foster*, 1 Cr. & Dix (Ir.) 77. But where there were no circumstances tending to show fraud, the claim was allowed: *Re Coulter*, *Ibid.* 215, n. The object of increasing the number of freeholders at an election is not an object in itself against law, or morality, or sound policy; on the contrary, the larger number of persons enjoying the elective franchise has been held by many to be beneficial to the constitution: *Per Tindal*, C. J., 10 Jur. 315. One W. G. contracted with A. for the purchase of a house, and afterwards sold it to B. and five others in equal shares. A. conveyed direct to B. and the five others, the purchase money being paid through W. G., whose object was to increase the number of voters. B. and the others purchased *bona fide*. They knew, however, they were to gain votes in the constituency, but there was no stipulation that they were to vote in any particular way, or in support of any particular interest: *Held*, that to make the conveyance void, the seller must be a party or privy to the illegal object of the conveyance; that W. G. was not the seller, for it did not appear that he had anything to convey: *Marshall v. Boun*, 7 M. & Gr. 188; s. c. 8 Scott N. R. 880. See also, *Hoyland v. Bremner*, 2 C. B. 84. A conveyance of land by one vendor to several purchasers, for a *bona fide* consideration, is valid, although the avowed object of the vendor is to multiply, and that of a purchaser to acquire, the right of voting in a constituency: *Alexander v. Newman*, 2 C. B. 122; *Beswick v. Ashworth*, *Ibid.* 152. Conveyances made void by 7 & 8 Wm. III. cap. 25, are void at common law: *Riley v. Crossley*, 2 C. B. 146; s. c. 10 Jur. 316. Where the Revising Barrister held that a conveyance was void only on the ground that it was made for the purpose of multiplying voices, but did not find that there was fraud in fact, his decision was reversed: *Ibid.* See also, *Thorniley v. Aspland*, 2 C. B. 160. Where the father of a voter conveyed certain lands to him and his brother, in consideration of natural love and affec-

offence under this section, shall incur a like penalty (*w*). See also *Rev. Stat.* cap. 10. sec. 170.

Recovery
of penal-
ties.

28. The penalties (*x*) mentioned in the three next preceding sections may be recovered with

tion, and although it appeared that one object was to make provision for the sons, the principal object was to entitle them to vote; and that the father occupied the land since the date of the deed, and paid no rent to his sons. The Revising Barrister did not find, either way, whether the transaction was fraudulent; *Held* (1) that, as the Revising Barrister had formed no conclusion on the question of fraud, the Court would not infer it; and (2) that the law acknowledged the consideration of natural love and affection, in the case of a conveyance to a child, to be as good, to raise a use, as a pecuniary consideration between strangers: *Newton v. Hargreaves*, 2 C. B. 163; *Newton v. Moberley*, *Ibid.* 203; *Newton v. Crowley*, *Ibid.* 207. A conveyance of property by a father to his son, to give him a qualification to vote, is not invalid, but is a bounty: *May v. May*, 33 Beav. 81.

(*w*) This is the same as sec. 170 of the Election Act. By sec. 171 of the same Act the conveyance is valid between the parties, and any agreement to reconvey is declared to be null and void.

(*x*) When a penalty is created by statute and nothing is said as to who may recover it, and it is not created for the benefit of the party grieved, and the offence is not against an individual, the Crown alone can sue for it: *Bradlaugh v. Clarke*, 8 App. Cas. 354. By the *Interpretation Act*, R. S. O. cap. 1, sec. 8, sub-sec. 29, where no provision is made for the appropriation of a penalty or forfeiture, one-half belongs to the Crown, and the other half to the private plaintiff. By 47 Vic. cap. 2, actions for penalties under this Act may be tried by a Judge without a jury.

costs of suit by any person suing for the same in any court of competent jurisdiction (y).

29. To prevent the creation of false votes, where any person claims to be assessed, or claims that any other person should be assessed, as owner or occupant of any parcel of land, or as possessing the income which entitles him to vote in the municipality at an election, and the assessor has reason to suspect that the person so claiming, or for whom the claim is made, has not a just right to be so assessed, it shall be the duty of the assessor to make reasonable enquiries before assessing such person (z). *See also Rev. Stat. cap. 180, sec. 40.*

Assessor to make enquiries before assessing persons claiming to be assessed.

(y) "I should say that Parliament cannot trust enforcing penalties through juries. If they choose to give the power to magistrates, in the same way as they have entrusted to the Judges the trial of those election petitions, you may get it done, but you will never effect the levying of penalties through juries for breaches of the election law." *Per Martin, B., Committee on Parliamentary and Municipal Elections, (1869,) p. 429.* "All my experience has certainly led me to the conclusion, and I see that Mr. Baron Martin and Mr. Justice Willes state the same thing, that men disregard those penalties: that they are not deterring at all; and that they very justly think they will not be put in practice; no one will sue them for penalties; no one will indict them for a misdemeanor; and they produce no effect at all." *Per Blackburn, J., Ibid. p. 508.* When punishment is brought within reasonable limits, it is understood that it will be enforced; and therefore the act is abstained from. The certainty of the penalty being incurred, tends to diminish the offence, p. 49.

(z) This is the same as sec. 40 of the Assessment Act. And by sec. 38 particulars of the assessed property obtained

Penalty on
assessor for
wrongfully
assessing
or omitting
to assess.

30. Any assessor who wilfully and improperly inserts any name in the assessment roll, or assesses any person at too high an amount, with intent in either case to give to any person not entitled thereto an apparent right of voting at any election, or who wilfully inserts any fictitious name in the assessment roll, or who wilfully and improperly omits any name from the assessment roll, or assesses any person at too low an amount, with intent in either case to deprive any person of his right to vote (*a*) shall, upon conviction thereof before a court of competent jurisdiction, be liable to a fine not exceeding \$200, and to imprisonment (*b*)

by the assessor from the person assessable is not to excuse the assessor from making due enquiry to ascertain its correctness. See also notes (*u*) p. 90 and (*v*) p. 91.

(*a*) This section applies to fraudulent assessments for the purpose of making votes, and may be read as a corollary to sec. 194 of the *Assessment Act*, which imposes a penalty on the assessor for making fraudulent assessments. "An assessor violating this section is liable not only to an action for the penalties above prescribed, but also to an indictment for a misdemeanor. These wilful and *mala fide* acts and omissions are evidently to be treated as indictable offences." *Per* Hagarty, C.J., in *Regina v. Snider*, 23 C. P. 336. In an action against municipal officers by an individual who is liable to taxation, for their omission to tax him, whereby he loses his right to vote, it must be shown that they omitted to tax him wilfully, or with design to deprive him of his vote; or that they had such actual knowledge of his liability to taxation that a wilful omission to tax him may be reasonably inferred: *Griffin v. Rising*, 11 Metc. 339.

(*b*) The Legislature of Ontario has legislative authority to impose imprisonment with or without hard labor for

until the fine is paid, or to imprisonment in the common gaol of the county or city, for a period not exceeding six months, or to both such fine and imprisonment, in the discretion of the court (c).

31. (1) The Clerk of the Peace and the Clerk of any Municipality having the custody of the list of voters of any municipality or part of any municipality or place, shall furnish a certified copy of such list, then last revised and corrected, or of any of the parts thereof, to any person who may require such copy or part, on being paid for the same by such person at the rate of four cents for every ten voters whose names are on such list or part: the said officers may furnish printed copies for each of which they shall be entitled to receive six cents instead of the fee aforesaid; and the officers shall verify any alterations made therein, by writing their in-

Clerks of
the Peace
and of
Municipalities to
furnish
copies of
last revised
voters' list.

enforcing any law of the Province, and may delegate that authority to municipal bodies: *Hodge v. Reg.* 9 App. Cas. 117.

(c) By 31 Vic. cap. 71, sec. 3 (D) any wilful contravention of any Act of the Legislature of any of the Provinces within Canada, which is not made an offence of some other kind, shall be a misdemeanor and punishable accordingly. There are some offences which must be prosecuted under the Dominion Statutes, and some which may be prosecuted under the Ontario Statutes: *Drake q. t. v. Preston*, 34 U. C. Q. B. 257. Where an offence is punishable by a criminal prosecution, and a statute prescribes a particular remedy by a summary proceeding, the prosecutor has the option of proceeding by indictment, or by the mode pointed out by the statute: *Rex v. Robinson*, 2 Burr. 799.

itals in close proximity thereto. If the alterations or interlineations exceed one hundred, it shall be the duty of the said officers to furnish written copies (*d*).

Fees to
Clerk of
the Peace
for copy of
voters' list.
See Rev.
Stat. cap.
10, sec. 56,
or cap. 174,
ss. 28, 129.

(2) For each copy of the voters' list or of any of the parts thereof furnished to the Returning Officer, according to Form 8 in Schedule A to *The Election Act*, or according to Schedule C to *The Municipal Act*, the Clerk of the Peace furnishing the same shall be entitled to receive the sum of six cents for every ten voters whose names are on such list or part, as the case may be.

Board of
County
Judges
may make
rules.

32. The Board of County Judges may, if requested so to do by the Lieutenant-Governor, frame Rules and Forms of procedure for the purpose of better carrying this Act into effect; and such Rules and Forms shall, after being approved of by the Lieutenant-Governor in Council, have the same effect and force as if they formed part of this Act (*e*).

(*d*) The fees to be paid are: (1) for a certified copy of the revised and corrected list, four cents for every ten voters; or (2) for a printed copy of list, six cents for pamphlet. Upon tender of the amount specified it is made the duty of the Clerk to furnish the copies required,—subject however to the provision as to alterations and interlineations. By 41 Vic. cap. 21, sec. 10, it is the duty of the Clerk to allow any voter, or the agent of any voter, to inspect and take copies of or extracts from the Assessment Rolls, Voters' Lists, notices, complaints, etc., in his office. See note to that section, and the Act, 46 Vic. cap. 18, for Schedule.

(*e*) The "Board of County Judges" was originally appointed to frame rules for Division Courts: (R. S. O. cap.

33. The words Householder (H), Freeholder (F), and Tenant (T), appearing on the assessment roll pursuant to *The Assessment Act*, shall, for the purposes of this Act, be held to also mean respectively Occupant (Oc.), Owner (O), or Tenant (T), and shall be so entered in the voters' list by the Clerk of the Municipality (*f*). *See Rev. Stat. cap. 180. sec. 18.*

Words
"Householder,"
etc., on roll
how to be
entered on
list.

34. In carrying into effect the provisions of this Act, the Forms set forth in the Schedule hereto may be used (*g*), and the same or Forms to the like effect shall be deemed sufficient for the purposes mentioned in the said Schedule (*h*).

Forms given
in this
Act may be
used.

47, ss. 237, 238.) No rules or forms have been promulgated for the Revision of Voters' Lists.

(*f*) See the table appended to note (*i*) p. 8. By the Assessment Act, 48 Vic. cap. 42, the Assessor is required to set down in his roll whether the party is a Freeholder, Householder, Tenant, or Landholder's Son, by inserting opposite the name of the party the letters F., H., T., or L. S., as the case may be. But see note (*f*) p. 104.

(*g*) The form of Voters' Lists given with this Act was repealed by 42 Vic. cap. 3, sec. 9, and a new form provided by that Act. The forms will be found in the Appendix.

(*h*) When a statute expressly provides that a thing is to be done in a given form, the statute ought to be followed: Harrison's *Municipal Manual*, 238. The forms here given, or to the like effect, shall be deemed sufficient. By the Interpretation Act, sec. 8, sub-sec. 32, it is provided that "when forms are prescribed, slight deviations therefrom not affecting the substance, or calculated to mislead shall not vitiate them." The English Ballot Act (35 & 36 Vic. cap. 33) provides that "the schedules, and notes thereto,

and directions therein, shall be construed and have effect as part of the Act," and in the schedule it was stated that "the forms contained in the schedule, or forms as nearly resembling the same as circumstances will admit, shall be used." At an election held under this Act, the Returning Officer did not observe the forms provided: *Held*, that the breach by the Returning Officer of the directions in the rules to the Act, which did not affect the result of the election, did not render the election void: *Woodward v. Sarsons*, L. R. 10 C. P. 733. "It would be quite contrary to the recognized principles upon which Courts of Justice construe Acts of Parliament, to enlarge the conditions of the enactment, and thereby restrain its operation, by a reference to the words of a mere form given for convenience sake in a schedule, and still more so when that restricted operation is not favourable to the subject, but the reverse." *Per* Lord Penzance, in *Dean v. Green*, 8 P. D. at p. 89. If the enacting part of the statute and the schedule cannot be made to correspond, the latter must yield to the former: *Per* Lord Cottenham, L. C., in *Re Baines*, 1 Cr. & Ph. 46.

An Act to give finality to Voters' Lists and for other purposes.

41 VICTORIA, CHAPTER 21.

[Assented to 7th March, 1878.]

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. This Act may be cited as "*The Voters' Lists Finality Act*" (a).

(a) "I would respectfully submit for the consideration of the Legislature, whether the law should not be so amended that the certified List of Voters after it has been finally revised, should be considered as establishing the right of the elector to vote at the time of the revision ; and that the only matter as to the right of the elector to vote that should be enquired into before the rota Judges on a scrutiny, should be such as might arise after the filing of the revised List of Voters." *Per Richards, C.J.*, (1871) in *Re Stormont*, H. E. C. 41. The judicial construction placed upon the Election Act permitted great latitude of inquiry upon the right to vote upon a scrutiny being held. It was to prevent this extravagant range of investigation, which reached a culminating point in one memorable instance, the Act of 1878 (41 Vic. cap. 21,) was passed : *Per Moss, C.J.A.*, in *Re South Wentworth*, H. E. C. 534. See further, note (b) p. 1.

Interpreta-
tion.

2. In this Act, unless there is something in the context repugnant to such a construction (b):

"Election;"

1. The word "Election" (c), the words "To

(b) An interpretation clause should be used for the purpose of interpreting words which are ambiguous, or equivocal, and not so as to disturb the meaning of such as are plain : *Reg. v. Pearse*, 5 Q. B. D. 386. An interpretation clause in an Act should be understood to define the meaning of the word thereby interpreted in cases as to which there is nothing else in the Act opposed to or inconsistent with that interpretation : *Midland Railway Co. v. Ambergate, &c., Railway Co.*, 10 Hare, 359. Words which are terms of art ought to be distinctly explained. Common words, therefore, ought to be used in their common acceptance, and when they have different acceptations in common language, these, when it is necessary, ought to be distinguished. It is sufficient to define words that are uncommon, or that are used in an uncommon meaning : *Reid's Intellectual Powers*, 219. The modern legislative practice is to have an introductory interpretation clause to each statute. The first general Interpretation Act was passed by the Legislature of Upper Canada in 1837 : 7 Wm. IV. cap. 14. In 1849 a similar Act was passed by the Legislature of Canada : 12 Vic. cap. 10. These Acts were consolidated in C. S. C. cap. 5, and C. S. U. C. cap. 2 ; and were made applicable to the Dominion Acts with some additions in 1867 in *An Act Respecting the Statutes of Canada*, 31 Vic. cap. 1 (D.). In the session of 1867-8 the Legislature of Ontario passed a similar Act, which was consolidated in 1877 as *The Interpretation Act*, R. S. O. cap. 1. In 1850, a similar but shorter Act was passed by the Imperial Parliament (Lord Brougham's Act), 13 & 14 Vic. cap. 21 ; see *Chorlton v. Lings*, L. R. 4 C. P. 374.

(c) "Election" shall mean an election of a member to serve in the Legislative Assembly : R. S. O. cap. 10, sec. 2, sub-sec. 7.

Vote" (d), the words "Corrupt Practices" (e), "To Vote;" "Corrupt Practices;"

(d) "To vote" shall mean to vote at an election of a member to serve in the Legislative Assembly: R.S.O. cap. 10, sub-sec. 8.

(e) "Corrupt Practices" shall mean bribery, (R. S. O. cap. 10, secs. 149, 150); treating (*Ibid.* secs. 151-3); and undue influence, (sec. 155); or any of such offences as defined by this (cap. 10) or any other Act of the Legislature, or recognized by the common law of the Parliament of England; furnishing entertainment to meetings of electors, (*Ibid.* sec. 151); hiring vehicles, (*Ibid.* sec. 154); personation, (*Ibid.* sec. 156); and selling or giving liquor at taverns on polling day during the hours appointed for polling: (*Ibid.* sec. 157, sec. 2, sub-sec. 11). The terms used in the earlier statutes were "bribery and corruption," (2 Geo. II, cap. 24, Bribery Act) and "corrupt practices," (49 Geo. III, cap. 118. Of these offences *Bribery* has been thus defined: Whenever a person is bound by law to act without any view to his own private emolument, and another, by a corrupt contract, engages such person, on condition of payment or promise of money or other lucrative consideration, to act in a manner which he shall prescribe, both parties are, by virtue of such contract, guilty of bribery: *St. Ives*, 2 Doug. El. Cas. 195. It is the offering of money or money's worth with the view of influencing a vote. It must be corrupt—*i. e.*, to influence votes: *Cheltenham*, 1 O. & H. 65. To produce that result which the Legislature intended to forbid: *Wallingham*, 1 O. & H. 60. Contrary to the intention of the Act, with a motive or intention by means of it to produce an effect upon the election, not going so far as bribery, but with a motive thereby to influence the election: *Hereford Judgments* 109. Any offer of money or money's worth is equally forbidden: "It cannot be supposed that an offer to bribe is not as bad as the actual payment of money. It is a legal offence:" Per Willis, J., *Coventry*, 1 O. & H. 107. It is bribery to make a corrupt offer of a valueless thing to

"Farmer's Son." and the words "Farmer's Son" (*f*), shall respectively have the meaning given thereto by section two of "*The Election Act of Ontario* ;"

"Voter." 2. The word "Voter" shall mean a person entitled to vote, or to be named in the voters' list (*g*) ;

"List;"
"Voters'
List." 3. The word "List," and the words "Voters' List," shall respectively mean the alphabetical list referred to in section two of "*The Voters' Lists Act*," or in section four of the Act passed in the fortieth year of Her Majesty's reign, and chaptered twelve, as the case may be ;

"Scrutiny." 4. The word "Scrutiny" (*h*) shall mean any scrutiny of the votes polled at an election within

induce a voter to vote : *Bewdley (Spencer v. Harrison)*, 44 L. T. N. S. 283. Or "a nice present:" *Halton*, H. E. C. 283.

(*f*) "Farmer's Son." This title, which was limited to the sons of owners of farms of 20 acres or over, was by the *Assessment Act*, R.S.O. cap. 180, sec. 20, required to be entered on the Assessment Roll by the Assessor, so as to have persons entered under that title registered as voters under the *Election Act*. But by 48 Vic. cap. 42, the above title and the clauses directing the assessor to enter such persons on the Assessment Roll, were repealed, and a new title of "Landholder's Son" substituted. See note (*u*) p. 18, as to the classes of persons who may be registered under the latter title.

(*g*) See notes (*u*) and (*v*), p. 32.

(*h*) A scrutiny of votes is an inquiry into or investigation of the qualification or right to vote of the persons voting at an election. When an Election Petition claims the seat

the meaning of sections seventy-two and the nine next succeeding sections of "*The Controverted Elections Act of Ontario*;" and

5. The words "Clerk of the Peace," shall mean the Clerk of the Peace for, and the words "County Judge," shall mean the Judge of the County Court for, the County or Union of Counties within which lies the municipality for or in respect of which the voters' list is made.

3. Every voters' list which under this Act, or under sections eleven or twelve of "*The Voters' Lists Act*," or under sections six or eight of

"Clerk of the Peace."
"County Judge."

Certified voters' list conclusive.

for the unsuccessful candidate at an election, alleging that he had in fact a majority of the good and lawful votes and ought to have been returned as the member, the case proceeds on a scrutiny of votes. By the *Election Act*, sec. 74, a scrutiny of votes polled at an election may be taken before the Election Judge, or in each municipality before his Registrar. The jurisdiction of such Registrar in such scrutiny is not equal to that of the Election Judge, and is limited to the determination of the validity of the votes objected to without attempting to investigate for which candidate they were cast: *Re Lincoln*, 4 App. R. 206. The inquiry into each vote is a separate case. Voters whose votes are attacked are looked upon as parties to the suit or petition: *Clerk on Elections*, 463. But not as to proceedings to disqualify for corrupt practices: *Bewdley*, 1 O'M. & H. 175. Formerly the scrutiny was taken before the Returning Officer at the poll, and for this purpose he sat apart in a booth, where objections were heard by him: *Chambers on Elections*, 615. By the *Election Act*, sec. 112, it is provided that "no Returning Officer or Deputy Returning Officer shall grant, make, or enter into any scrutiny of the votes given at any election."

"*The Voters' Lists Acts of 1876*" (i), was during the twelve months next prior to the passing hereof, or is hereafter certified by the County Judge, shall, upon any scrutiny, be final and conclusive evidence of the right of all persons named therein to vote at any election at which such list was or could have been legally used (j); except

(i) The secs. 11 and 12 correspond with secs. 6 and 8 of the *Voters' List Act* of 1876, which was repealed by 40 Vic. cap. 6. Its title appears in Schedule A to the Revised Statutes of Ontario, as "repealed from the day the Revised Statutes of Ontario take effect," which was the 31st December, 1877: See R. S. O. vol. 2, p. 2291.

(j) The *Voters' Lists Finality Act*, 1878, renders the *Voters' List* final and conclusive of the right of all persons named therein to vote, except where there has been a subsequent change of position or *status*, by the voter having parted with the interest which he had—or by the assessment roll appeared to have—in the property, and becoming also a non-resident of the electoral division: *South Wentworth*, H. E. C. 531. And particulars, objecting to certain voters as (1) aliens, (2) minors, (3) persons having no interest as owners, tenants, or occupants in the lands assessed to them and (4) farmers' sons not residing with their fathers upon their farms as required by law, were struck out: *Ibid.* The *Registration of Voters' Act* (6 Vic. cap. 18, sec. 98), (Imp.) gives a limited power to the election tribunals "to inquire into and decide upon the right to vote of any person, who, being upon the register of voters in force at the time of such election, shall have voted at such election; or, being upon such register, shall have tendered his vote at such election, (1) in case the name of such person shall have been (a) specially retained upon such register, or (b) inserted therein, or (c) expunged, or (d) omitted therefrom, by the express decision of the Revising Barrister, who shall have

(1) Persons guilty of corrupt practices at or in respect to the election in question on such scrutiny, or since said list was certified by the County Judge as aforesaid (k);

Except as to persons guilty of corrupt practices.

revised the lists from which such register shall have been formed;" also "upon the right to vote of any person who being upon such register shall have voted at such election, so far as the same may be disputed; (2) on the ground of legal incapacity at the time of his voting by virtue of any statute now or hereafter to be in force; or (3) on the ground of any other legal incapacity at the time of his voting, which may have arisen subsequently to the expiration of the time for making out the list of voters." Under the Ontario Act, there is no right of Appeal, as in England; and the only mode of reviewing the decision of the County Judge, is as stated in note (y) p. 65 to sec. 14 of the *Voters' List Act*, or as provided in sec. 11, *post*. It may be noted here, that although the County Judge has jurisdiction to enquire into the right to vote of persons disqualified by office, and of persons disqualified by corrupt practices—which latter disqualification may be found either on a complaint before the Voters' List Court, or on a conviction by the Election Court or by the Court for the trial of illegal acts at elections, or by a Court of civil or criminal jurisdiction—the non-application to strike off the names of voters guilty of such corrupt practices, and the consequent retention of their names on the Voters' Lists, allows them to vote as if duly qualified voters; and their votes cannot thereafter be challenged on a scrutiny. But the non-application to strike off the names of persons disqualified by their holding certain offices, is no bar to the right to attack their votes on a scrutiny.

(k) In regard to the class of persons here excepted, the list would not be conclusive. The County Judge has jurisdiction to enquire into charges of corrupt practices against voters at prior elections, for the purpose of striking off their

Non-resident subsequent to revision of list.

(2) Persons who, at any time subsequently to said list being certified by the County Judge as aforesaid, are or have been non-resident either within the municipality (*l*) to which said list relates, or within the electoral district (*m*) for

names from the Voters' List, if he finds the charge sustained; but corrupt practices at an election subsequent to the revision of the Voters' List may be enquired into by the Election Judge under the *Election Act*. A bribed voter who has voted loses his *status*, and his vote is a nullity: *Norwich*, 19 L. T. R. S. 621. In addition to the classes of persons whose right to vote may be challenged on a scrutiny of votes, the votes of persons voting *twice* at the election (R. S. O. cap. 10, sec. 173), and the votes of persons who personate voters may be struck off. But though this Act makes the Voters' List final as regards the votes of others than those specially excepted by this Act, and those last mentioned, persons wilfully voting at an election without having all the qualifications required by law to entitle them to vote, are liable to a penalty of \$200 each: (R. S. O. cap. 10, sec. 168.) And they may also be indicted at the Assizes for a misdemeanor: *Reg. v. Sturdy*, Goderich Autumn Assizes, 1882.

(*l*) "Non-resident within the Municipality." This term was intended to affect income voters, but under the amendments made in 1836, substituting residence within the Electoral District, it should now read as "non-resident in the Electoral District."

(*m*) "Non-resident within the Electoral District." This term applies to all classes of voters; for by the *Franchise and Representation Act*, 1885 (48 Vic. cap. 2), as amended by the Act of 1886 (49 Vic. cap. 3), the franchise for Legislative elections is limited to persons who are "at the time of the final revision and correction of the Assessment Roll, and also at the time of the election, a resident of, and domiciled within the Electoral District, for which he claims to vote." See further the notes to the Election Act, *post*.

which the election is being held, and who by reason thereof are under the provisions of "*The Election Act of Ontario*" incompetent and disqualified to vote; (n).

[*Sub-section 3 was repealed by 48 Vic. cap. 2, sec. 4, and 48 Vic. cap. 3, sec. 5.*]

(4) Persons who, under sections four (o), ^{Disqualified by R.S.O. cap. 10.} five (p), and six (q) of "*The Election Act of*"

(n) "The particular portion of the Election Act to which reference is here made does not enumerate any grounds upon which a person shall be incompetent or disqualified, but merely states the necessary qualification. The particular sub-section now in question does not seem to be happily framed; it invites the discussion it has received. It does not appear possible to apply to it any rule of minute verbal criticism; such a test it obviously will not stand. But keeping in view the discernable object of the legislature, we think its effect is to render the Voters' List final, except where there has been a subsequent change of position by the voter having parted with the interest which he had—or by the Assessment Roll appeared to have—in the property, and becoming also a non-resident of the Electoral Division:" *Per Moss, C. J. A., Re South Wentworth*, H. E. C. 534.

(o) This section disqualifies certain officials. See note (m) p. 10, and notes to sec. 4 of the *Election Act*.

(p) This section disqualifies Returning Officers, Election Clerks, and persons receiving or expecting to receive payment for acting as counsel, agents, attorneys, or clerks at the election, or in any other capacity whatever, in reference thereto. See further the notes to sec. 5 of the *Election Act*.

(q) This section provides: "No woman shall be entitled to vote at any election." But by the *Municipal Amendment Act, 1884*, widows and unmarried women, if qualified as to

Ontario," are disqualified and incompetent to vote.

[Sections 4, 5, 6 and 7 made temporary provisions respecting the Voters' List of 1877.]

Judge to
revise vo-
ters' lists
within two
months of
last day
for com-
plaints.

8. It shall hereafter be the duty of the County Judge so to arrange and proceed and so to fix the sittings of the Court for the hearing of complaints against or in respect of any Voters' List, that such complaints shall be heard and determined, and said list finally revised, corrected and certified under "*The Voters' Lists Act*," within two months (*r*) of the last day for making such complaints (*s*): Provided always, that no-

property or income, may vote at Municipal Elections. See note (*o*) p. 11, and note to sec. 6 of the *Election Act*.

(*r*) This direction must be construed as subject to the statutory and other duties of the County Judge in holding the County and Division Courts. The sitting for the revision of the Voters' Lists should be held in the municipality whose list is being revised. See note (*c*) p. 65.

(*s*) This clause limiting the County Judge to two months for the revision of the Voters' Lists, must be read as merely directory. See notes to sec. 23, p. 85. When a statute is merely directory, a thing omitted to be done at the proper time may be allowed afterwards: *Rex v. Loxdale*, 1 Burr. 445. There is a known distinction between circumstances which are of the *essence* of the thing required to be done by an Act of Parliament, and clauses merely directory. The precise time in many cases is not of the *essence*: *Per* Lord Mansfield, C.J., *Ibid*. Where owing to the neglect of the Justices, the overseers were not appointed at the time fixed by statute, a mandamus was granted directing them to appoint them, there being no negative words "and at no other

thing in this section contained, shall apply to any Voters' List specially provided for by the ^{Proviso.} [Expired].

time" in the Act: *Rex v. Sparrow*, 2 Strange 1123. So a mandamus was granted to appoint overseers in an extra-parochial place after the time had expired: *Rex v. Inhabitants of Rufford*, 1 Strange 512. Where a statute directed that the Michaelmas Quarter Sessions should be holden in the week next after the 11th October: *Held*, merely directory, and such sessions may, notwithstanding the enactment, be legally holden at another time: *Rex v. Justices of Leicester*, 7 B. & C. 6, s. c., D. & Ry. 772. "If there had been negative words declaring that the sessions should be holden at no other time but that specified, we might give that effect to the statute; but the words used being only affirmative, I think the authority of Lord Hale (Hale's P. C. 50) is sufficient to warrant us in saying that the statute is merely directory, and that we cannot hold that the proceedings at the session in question, were all *coram non judice*: *Per* Lord Tenterden, C. J., *Ibid*. "The distinction between directory and imperative statutes has been long known; an early instance in which it was taken, is the case of *Rex v. Sparrow*, 2 Stra. 1123, as to the time of choosing overseers. I understand the distinction to be that a clause is directory when the provisions contain mere matter of direction and nothing more, but not when they are followed by such words as that anything done contrary to such provisions shall be null and void to all intents:" *Per* Taunton, J., in *Pearce v. Morrice*, 2 A. & E. 96. A strict and severe interpretation of the statute is to be avoided, if possible, when it leads to consequences which the Legislature must be presumed not to have intended: *Per* Moss, C. J. A., in *Re Lincoln*, 2 App. R. 338. A statute specifying a time within which a public officer is to perform an official act affecting the rights and duties of others, is directory merely, unless the nature of the act to be performed, or the phraseology of the statute is such that the designation of time, must be considered as a limitation of the power of the officer: *People v. Allen*, 6 Wend. 486;

provisions of sections four, five and six of this Act (t).

Assess-
ment and
entry on
roll of
Farmer's
Son.

9. To remove doubts it is hereby declared that any Farmer's Son entitled as such to be assessed or to have his name entered in the Assessment Roll of any Municipality (u), shall be

People v. Cook, 8 N. Y. 67; *Jackson v. Young*, 5 Cowen 269. A statute directing an officer, before whom proceedings were had, to make and file his report within twenty days after the appointment of trustees, and also directing the latter to cause their appointment to be recorded within thirty days, is directory merely, and an omission to comply with these requirements within the prescribed time will not vitiate the proceedings: *Wood v. Chapin*, 13 N. Y. 509. When there is no substantial reason why the thing to be done might as well be done after the time prescribed as before; no presumption that allowing it to be so done, it may work an injury or wrong; nothing in the Act itself, or in other Acts relating to the same subject matter, indicating that the Legislature did not intend that it should rather be done after the time limited than not to be done at all; then the Courts assume that the intent was that if not done within the time prescribed, it might be done afterwards. But when any of these reasons intervene, the limit is established: *State v. McLean*, 9 Wis. 292. The time fixed for the performance of intermediate steps, after jurisdiction has been once acquired, should be regarded as directory only, and an omission to perform one or more of them in time, would not render the whole proceeding abortive: *United States Trust Company v. United States Fire Insurance Company*, 18 N. Y. 220.

(t) The sections above referred to are now *effete*.

(u) A person residing on and working a farm, with his father, under the promise of a deed of a part of a farm,

so assessed and shall have his name so entered without any request in that behalf, unless he informs or notifies the assessor to the contrary (*v*); and any person entitled to be entered in such Assessment Roll or in the Voters' List based thereon, or to vote or to be a voter in the Electoral District in which such municipality is situate (*w*), shall, in order to have the name of such Farmer's Son entered and inserted in such Assessment Roll, or List of Voters, as the case may be, have for all purposes the same right to

should not be entered as owner jointly with his father, but as a "Farmer's Son:" *Per Moss, C. J. A., Opinions on the Voters' Lists Acts, Case 8 (Appendix.)*

(*v*) There is no provision now in the *Assessment Act*, directing the Assessor to enter names under the distinctive title of "Farmers' Sons;" and it is not clear how the above provision for "Farmers' Sons" applying to be entered on the Voters' List for Municipal Elections only, can be worked out. The *Assessment Amendment Act, 1885*, 48 Vic. cap. 42, sec. 4, repeals the provisions of the *Assessment Act*, R. S. O. cap. 180, sec. 20, directing the assessor to enter every farmer's son *bonâ fide* resident on the farm of his father or mother, at the time of making the assessment, and makes new provisions respecting a new class of voters under the title of "Landholders' Sons." By these new provisions the assessor is directed to "enter and insert on his roll next after any landholder named therein, the name of every son of such landholder who is 21 years of age, and who is, and for 12 months next, prior to the return by the Assessor of his Roll, has been, *bonâ fide* residing with such landholder in the residence or dwelling of such landholder within the local municipality," and he is also to write opposite the name of every such son the letters "L. S."

(*w*) See note (*w*) p. 32.

Right to
apply.

apply, complain or appeal to any Court or to any Judge in that behalf, as such Farmer's Son would or can have personally, unless it is made to appear to the Court or Judge that such Farmer's Son actually dissents therefrom; and the Act passed in the fortieth year of the reign of Her Majesty, chaptered nine, and entitled "*An Act to give the right of Voting to Farmers' Sons in certain cases*" (x), shall be read and construed as if this section had been included therein at the time of the passing thereof (y).

40 Vic.
cap. 9.

Inspection
and copies
of docu-
ments.

10. Any voter, and any person entitled to be a voter, and any agent of such voter or person, shall have liberty at all reasonable times and under reasonable restrictions, to inspect (z) and

(x) This Act was repealed by 40 Vic. cap. 6, and the proclamation of the Lieutenant-Governor, issued in pursuance thereof, (see R. S. O., Schedule A, vol. 2, p. 2293); and its provisions were incorporated with and re-enacted in R. S. O. cc. 9, 10, 174 and 180. See *Ibid*, Appendix B, p. 2449. Where an expired or repealed statute is afterwards revived in another statute, the law of the first is in force: *Shipman v. Henbest*, 4 T. R. 109.

(y) Where an Act recited certain statutes and repealed them; and then gave certain powers "in terms of the said recited Acts," which were the repealed statutes: *Held*, that such phrase revived and consolidated the provisions of the repealed statutes: *Blantyre v. Clyde*, 6 App. Cas. 273. It is no doubt a very extraordinary way of carrying out the announced intention of the Legislature—to repeal the former laws, consolidate their provisions, and say that the powers conferred shall be just the same as if the repealed Acts were still in force: *Per* Lord Blackburn, *Ibid*.

(z) The common law rule is that where documents are of a public nature, and are kept for the use of the public at

take copies of, or extracts from assessment rolls, notices, complaints, applications, and other papers and proceedings necessary or of use for

large, every person affected or interested in such documents has a right to inspect them at reasonable times. Statutes prescribing such right of inspection are supplementary of the common law. Documents which are of a public nature, and which are public documents, cannot be withheld from inspection: *Rex v. Bishop of Ely*, 8 B. & C. 112. The right to inspect may be enforced by *mandamus*: *Tapping on Mandamus*, 94, 161. And when a new right has been created by Act of Parliament the proper method of enforcing it is by *mandamus* at common law: *Simpson v. Scottish Union &c. Company*, 1 Hem. & Mil. 618, s. c. 9 Jur. N. S. 711. The writ lies to allow a burgess to inspect the voting papers deposited with a town clerk and to compare them with a list of his own, and to permit him to mark on such list the information he finds in such papers: *Rex v. Arnold*, 4 A. & E. 657. An inhabitant of a parish and interested in the question of a custom as to a church rate may have liberty to inspect the parish books: *Anon.*, 2 Chit. R. 290. A rated parishioner has an interest in seeing what has been done with the corporate funds, and whether the expenditure of the parish money is proper; and without any statutory provision authorizing inspection, the Court will grant him a *mandamus* to inspect the accounts of such expenditure: *Rex v. Great Farrington*, 9 B. & C. 541. But he must show that the purpose for which he desires the inspection is one connected with the general interest of the public and not arising out of his own personal convenience or caprice: *Rex v. Clear*, 7 Dow. & L. 393, and it will not be granted to ratepayers merely to gratify a rational curiosity after the accounts have been audited and published: *Rex v. Staffordshire*, 6 A. & E. 84. "We are by no means disposed to narrow our own authority to enforce by *mandamus* the production of every document of a public nature in which any one of the King's subjects can prove himself to be interested.

Duty of
Clerk.

the carrying out of the provisions of "*The Assessment Act*," "*The Voters' Lists Act*," and this Act (a); and the Clerk of the Municipality is to afford for the said purposes all reasonable facilities which may be consistent with the safety of the said documents, and the equal rights and interests of all persons concerned (b), and shall

For such persons every officer appointed by law to keep records ought to deem himself a trustee." *Per* Lord Denman, C. J., *Ibid.* 99. "I do not see upon what principle of justice he who is a trustee and guardian of the evidence of other's rights can lock it up from them." *Per* Lord Ellenborough, C. J., in *Rex v. Tower*, 4 Mau. & Sel. 162. A resident inhabitant of a corporate town, though not a corporator, but who is living in a place in which he is under the rule and government of the corporation, may have an inspection of their by-laws: *Harrison v. Williams*, 4 Dow. & Ry. 820. The writ will be granted in the case of a private corporation to inspect a book of accounts between the company and its shareholders, and which is regarded as confidential: *People v. Pacific Mail Steamship Co.*, 50 Barb. 280. And to aid a judgment creditor of a company in ascertaining who are its shareholders and the amounts unpaid by them: *Reg. v. Derbyshire*, 3 E. & B. 784. Everybody has a right to inspect the books of the sessions of a corporation: *Herbert v. Ashburner*, 1 Wils. 297.

(a) This inspection is to be allowed by the Clerk without the payment of fees. "It is a well settled rule of law that every charge upon the subject must be imposed by clear and unambiguous language:" *Dwarris on Statutes*, 646. Acts in order to infringe upon the legal rights of the subject, and especially to impose a charge or tax, must be expressed in language clear beyond all reasonable doubt: *Shaw v. Ruddin* 9 Ir. C. L. R. 214.

(b) This is substantially the same as section 239 of the *Municipal Act*. The fees payable under that Act are ten

in regard to the matters aforesaid be subject to the directions and summary jurisdiction of the County Judge (c).

11. In order to facilitate uniformity of decision without the delay or expense of appeals :

Uniformity of decisions.

(1) Any County Judge may state a case on any general question arising or likely to arise, or expected to arise under "*The Voters' Lists Act*" or this Act, and may transmit the same to the Lieutenant-Governor in Council, who thereupon shall immediately refer the said case to the Court of Appeal or a Judge thereof for the opinion of such Court or Judge thereupon (d) ; or

County Judge may obtain judicial opinion from Court of Appeal.

Lieut.-Governor's duty.

cents per 100 words for copies of documents. The fees payable for Voters' Lists are at the rate of four cents for every ten voters, or six cents for each copy of the printed list of voters. See note (g), p. 97.

(c) See note (o) p. 86.

(d) Under the Registration of Voters' Act, 6 Vic. cap. 18 (Imp.), electors have a right of appeal from the "express decision" of the Revising Barrister on the validity or invalidity of any vote, to the High Court of Justice, either by one appeal or a number of appeals consolidated, or by a special case, stated by the Revising Barrister. The jurisdiction given by this section to the Court of Appeal does not oust the ordinary jurisdiction of the Superior Courts to review the decisions of County Judges as pointed out in note (e) p. 65. Nor would the "opinion" given by the Court on a case submitted under this section be binding upon the ordinary tribunals. The jurisdiction is anomalous. It may be noted that the section is permissive as to the proceedings of the County Judge: "*may* state a case on any general question arising, or likely to arise, or expected to arise," and "*may* transmit," etc. But when a

Lieut.-Gov-
ernor may
obtain ju-
dicial opin-
ion.

(2) The Lieutenant-Governor in Council may refer a case on any such general question to said Court of Appeal or a Judge thereof, for a like opinion (e).

County Judge initiates his proceedings under this Act, the section becomes imperative as regards the action of the Lieutenant-Governor in Council, who "*thereupon shall immediately refer the said case to the Court of Appeal;*" and also upon the Court of Appeal, for "*upon the receipt of such case it shall be the duty of such Court to appoint a time and place for hearing arguments, "such Court or Judge shall hear argument," and "shall thereupon consider the said case, and certify to the Lieutenant-Governor in Council the opinion of the Court or Judge thereon."* But when it authorizes a voter to apply to the Court (sub-sec. 5), the clause returns to the permissive form and enacts that the Court "*may give an opinion on any such question at the instance of any voter.*"

(e) By the Privy Council Act of 1833 (3 & 4 Wm. IV. cap. 41, sec. 4), Her Majesty may refer to the Judicial Committee of the Privy Council, for hearing, or consideration, any matter, as Her Majesty shall think fit; and such Committee shall thereupon hear and consider the same, and shall advise Her Majesty thereon. But it would appear from the reported cases that this jurisdiction has been invoked only in advising the Crown to grant, or refuse, leave to appeal to the Judicial Committee, in cases where appeals do not ordinarily lie, and in cases which are not strictly appealable grievances. By the Supreme Court Act of 1875, (38 Vic. cap. 11, sec. 52) the Governor General in Council may refer to the Supreme Court, for hearing and consideration, any matter whatever, and the Court shall thereupon hear and consider the same, and certify their opinions to the Governor. This function of the Supreme Court has been invoked only in a few instances. By the *Public Schools Act, 1885*, 48 Vic. c. 49, sec. 238, the

(3) Immediately upon the receipt of such case it shall be the duty of such Court or Judge to appoint a time and place for hearing arguments (if any be offered) upon the points and matter involved in such case, of which time and place written notice shall be given by the Clerk of said Court posting up a copy of such notice in the office of each one of the Superior Courts at Osgoode Hall, in Toronto, at least ten clear days before the time appointed as aforesaid.

Duty of
Court of
Appeal or
Judge.

Procedure.

(4) At the time and place fixed therefor as aforesaid, such Court or Judge shall hear argument upon the case by such and so many of the

Court to
hear argu-
ment.

Minister of Education, whose duties indicate that the Legislature intended to provide a domestic forum for the settlement of school questions, (*Per Burns, J.*, 10 U. C. R. 475), may submit a case arising under the Public or High School Acts (48 Vic. cc. 49 and 50) to any Judge of the Superior Courts for opinion and decision; but although that provision has been in existence since 1860, (23 Vic. cap. 49, sec. 23) the only case presented to the Courts, under the Act, was *Re Petition of the Minister of Education*, 28 C. P. 325. Trustees and executors may apply to a Judge of the High Court of Justice (R. S. O. cap. 107, sec. 135) for his advice or direction on certain questions affecting the trust property. In the United States, the Supreme Court shortly after its establishment was applied to by the President to advise the Government on certain questions affecting the construction of the Treaty with France, of 1778: but the Court declined on the ground that it could only be called upon to decide controversies brought before it as a legal tribunal, and that the Judges were therefore bound to abstain from giving extra-judicial interpretations, or opinions, on treaties, or questions of law, even though solemnly requested so to do by the Executive. 2 Story on the *Constitution of the United States*, sec. 1571.

Certifying opinion. counsel present (if any) as such Court or Judge may deem reasonable, and shall thereupon consider the said case and certify to the Lieutenant-Governor in Council the opinion of the Court or Judge thereof (*f*); and such opinion shall thereupon be forthwith published in the *Ontario Gazette*, and a copy thereof sent to the Judge of each County Court.

Publishing same.

Voter may obtain judicial opinion of Court or Judge. (5) The said Court of Appeal or a Judge thereof, may also give an opinion on any such question at the instance of any voter or voters or person or persons entitled to be voters, if said Court or Judge sees fit; and the proceedings with respect thereto shall be, as nearly as may be, the same as upon a case referred as afore-

Proceedings.

(*f*) The "opinion" of a Judge under this section, upon any "general question arising, or likely to arise, or expected to arise," will not be binding upon any of the Courts, nor upon the Judge himself. It is neither a judgment, nor a sentence, *in rem*, or *inter partes*. A judgment or sentence is a judicial determination of a cause agitated between real parties, upon which a real interest has been settled. In order to make a sentence there must be a real interest, a real argument, a real prosecution, a real defence, a real decision. *Per* Wedderburn, S. G., in *Duchess of Kingston's Case*, 20 How. State Trials 478; *Philpot v. Hunter*, 2 H. Bl. 402. The validity of a decree of a Court of competent jurisdiction may be questioned on the ground that it was not pronounced in a real suit, or if pronounced in a real substantial suit, that it was between parties who were really not in contest with each other: *Per* Lord Eldon, L.C., in *Earl of Bandon v. Becher*, 3 Cl. & Fin. 510. The Judicial Opinions given by the Judges of the Court of Appeal on the questions submitted by County Judges under this section of the Act will be found in the Appendix.

said, but, in addition, such County or Judge may require a deposit of money to cover the costs of hearing the question argued by counsel, and

may require such notice of the proceedings or any of them to be given to such person or persons as the Court or Judge may direct (*g*).

12. The Clerk of the Peace or the Clerk of the Municipality who has the custody of a Voters' List, shall furnish copies thereof to the Returning Officer in four days after a written application thereof has been delivered to him personally or left for him at his proper office (*h*).

Clerk to
give copies
of list to
returning
officer.

(*g*) No application has been made by any voter to the Court of Appeal since this Act was passed. It is questionable whether any opinion given to a voter under this clause would be binding upon the voter applying, or upon a County Judge trying a claim or complaint to which such voter was a party.

(*h*) The Returning Officer should indicate which Voters' List he requires for the purposes of an election, *i.e.*, the list filed with the Clerk of the Peace at least thirty days before the date of the writ of election, or the list mentioned in ss. 74 and 75 of the *Election Act*. The "proper list," is the last list of voters certified by the Judge and delivered to the Clerk of the Peace, at least one month before the date of the writ to hold the election: R. S. O. cap. 10, sec. 72. Where the list of voters of a township was made up from the Assessment Roll of 1870, and was sworn to by the Clerk on the 13th August, 1870, but was not delivered to the Clerk of the Peace until the 17th March, 1871,—the list for 1869, having been delivered on the 19th August, 1869, and the writ of election being dated on the 25th February, 1871: *Held*, that the Voters' List of 1869 was the proper list to be used at the election: *Monck*, 32 Q. B. 147.

Production
and custo-
dy of ballot
papers on a
recount.
R.S.O. cap.
10, sec. 117.

13. In case of a recount of votes or ballot papers under section one hundred and seventeen and the five next succeeding sections of "*The Election Act of Ontario*," the Returning Officer shall, on a written notice from the Judge, produce the ballot papers at the time and place appointed for the recount, and the same shall continue in the custody of the Returning Officer; and he shall continue to be responsible therefor, subject to any directions which the Judge may give in respect of the said ballot papers (i).

Fraudulent
insertion or
omission,
&c., on, or
dealing
with the
Assess-
ment Roll.

14. Any person who wilfully and improperly inserts or procures or causes the insertion of any name in the Assessment Roll, or assesses or procures or causes the assessment of any person at too high an amount, with intent in either or any such case to give to any person not entitled thereto, an apparent right to vote at any election; or who wilfully inserts, or procures or causes the insertion of any fictitious name in the Assessment Roll, or who wilfully and improperly omits, or procures or causes the omission of any name from the Assessment Roll, or assesses or procures or causes the assessment of any person at too low an amount, with intent in either case to deprive any person of his right to vote, shall, upon conviction thereof before a court of competent jurisdiction, be liable to a fine not exceeding two hundred dollars, and to imprisonment until the fine is paid, or to imprisonment in the common gaol of the county or city, for a period not exceeding six months,

Penalty.

(i) This clause is an amendment to the *Election Act*, and may be read in connection with ss. 117-122 of that Act.

or to both such fine or imprisonment, in the discretion of the Court (j).

15. [*As amended by 42 Vic. cap. 3, sec. 6:*] Clerk's fees on a complaint or appeal.
Where it is provided by any by-law or contract under which the Clerk of any municipality is appointed or employed (k), that the sum to be

(j) This clause,—which may be read in connection with sec. 30 of the *Voters' Lists Act*, page 96, which refers to assessors,—provides a penalty against “any person,” wilfully and fraudulently dealing with the assessment roll, or assessor, in creating false votes. The penalty here provided for, as well as the penalties under the *Voters' List Act*, may be sued for and recovered by civil action, or proceeding, at the suit of the Crown only, or of any private party, suing as well for the Crown as for himself, in any form allowed in such case by the law of this Province, before any Court having jurisdiction to the amount of the penalty in cases of simple contracts, upon the evidence of one credible witness other than the plaintiff or party interested. And if no other provision is made for the appropriation of such penalty, one half thereof shall belong to the Crown, and the other half shall belong to the private plaintiff, if there be one, and if there be none, the whole shall belong to the Crown: *Interpretation Act*, cap. 1, sec. 8, sub-sec. 29. By 47 Vic. cap. 4, sec. 38 (O.), actions brought in the High Court of Justice, or in any other Court for penalties under the *Election Act* or *Voters' Lists Act*, may be tried by a Judge without a jury.

(k) The Consolidated Municipal Act, 1885, 48 Vic. cap. 42, sec. 282 (2) provides that: “no Municipal Council shall assume to make any appointment to office, or any arrangement for the discharge of the duties thereof by tender, or to applicants at the lowest remuneration.” And by sec. 482 (3), the Municipal Councils may pass by-laws for regulating the remuneration, fees, charges, and duties of their officers, and the securities to be given for the performance of such duties.

paid him by way of salary as such Clerk is intended expressly or impliedly to include payment for any duties which as such Clerk and under "*The Voters' Lists Act*" (l) are to be performed by him, either in the preparation, publication, and distribution of the List of Voters under said Act, or before, upon and after the lodging with him of any complaint or appeal under said Act, or for any other act or work of whatever nature or kind required by the said Act to be done by him; then such Clerk shall not, in respect of such duties or work, be entitled to or be allowed

But this clause does not affect fees payable to such officers by statute, unless the by-law so declares: *Corporation of Peterboro' v. Halton*, 30 C. P. 455. But for the above provision it would be illegal for a Municipal Corporation to agree with the Clerk that he should receive a fixed salary in lieu of fees payable by statute, and that to carry out such agreement he should pay over to the corporation funds any excess of such fees beyond such salary: *Corporation of Liverpool v. Wright*, 1 Johns. 359, s.c. 5 Jur. N. S. 1156.

(l) With reference to the Clerk's duties under these Acts, the following suggestion will be found of great practical advantage: "A minute book of every transaction connected with the Voters' Lists, should be kept by every Clerk, just as he keeps the minutes of the Court of Revision." In this he should set down everything, *from day to day*, commencing with the final revision of the roll; this being, as it were, the *era* from which everything following is dated,—when list was sent to the printer,—received back,—posted up,—distributed, etc. This book, when produced at the sittings of the Court, would be *prima facie* evidence of the performance by the Clerk of the several duties entered in it. In it should be set down, also, the decision given by the Judge, on each appeal."—Judge Ardagh on the *Voters' Lists Act*, 13.

by the County Judge, nor shall there be taxed to him any fee, payment, cost or charge whatsoever; but when it is not intended by such by-law or contract to provide for the performance of such above-mentioned duties and work, then such Clerk shall be entitled in respect thereof to the following, but to no other, fee or compensation, that is to say:

(1) Two cents for the name of each person ^{2 cts. each} entered in the list of complaints, and in respect ^{appeal.} of whom appeal was made;

(2) Two cents for each such name entered in ^{2 cts. each} any necessary copy of said list of complaints; ^{name entered.}

(3) Eight cents for each necessary notice to ^{8 cts. each} any party complaining or complained against; ^{notice.}

(4) Three dollars for each day's attendance ^{\$3 per day.} on the sittings of the Court for the revision of the voters' lists;

(5) And to the actual and reasonable disburse- ^{Actual dis-} ments (if any) necessarily incurred by him in ^{burse-} serving the notices of complaint or appeal when ^{ments.} served by himself (*m*).

16. The person acting as Constable at the ^{Constable's} sittings of the court for the revision of any ^{fees.} voters' lists shall, as such constable, be entitled to

(*m*) This excludes fees for service, or mileage, or allowance for horse and buggy; only the *actual* and reasonable *disbursements* necessarily incurred are allowable under this clause. The fees allowed by this section are not chargeable against complainants where the Clerk is paid by salary.

the following but no other fees or compensation, that is to say (n) :

\$1.50 per
day.

1. The sum of one dollar and fifty cents for each day's attendance as such constable ;

Mileage,
10 c. per
mile.

2. For the service of any process or notice including the service, the receipt and the return thereof and all other services connected therewith when allowed by the Judge, a sum not exceeding ten cents per mile one way for each mile actually and necessarily travelled to effect such service.

By whom
the Clerk
and Con-
stable shall
be paid.

17. The compensation fixed by the two preceding sections shall be paid to the said Clerk and Constable respectively by the municipality the list for which is the subject of investigation ; and the amount of such compensation as certified by the Judge shall be so paid by the Treasurer of the said Municipality upon the production and deposit with him of the Judge's certificate (o).

(n) These allowances were formerly settled by the Judge at such sum as he should certify to be reasonable.

(o) *The Consolidated Municipal Act, 1885*, provides that every Treasurer shall receive and safely keep all moneys belonging to the Corporation, and shall pay out the same to such persons and in such manner as the laws of the Province and the lawful by-laws or resolutions of the Council of the Municipal Corporation whose officer he is, direct ; but no member of the Council shall receive any money from such Treasurer for any work performed or to be performed ; and such Treasurer shall not be liable in any action at law for any moneys paid by him in accordance with any by-law or resolution passed by the Council of the Municipality of which he is the Treasurer, unless when another disposition is expressly made of such moneys by statute. The duty of the Treasurer to pay over these moneys may be enforced by action or by a writ of *mandamus*. See end of note (f) p. 4.

An Act to make further provisions respecting Voters' Lists.

42 VICTORIA, CHAPTER 3.

[Assented to 11th March, 1879.]

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. This Act may be known and cited as "*The Short title. Voters' List Amendment Act,*" 1879.

2. The County Judge at any Court held by him for the revision of Voters' Lists, under *The Voters' Lists Act*, may, without any previous notice of appeal or complaint in that behalf, on an application made by or on behalf of the person named in the lists, correct any mistake (a) which shall be proved to him to have been made in compiling

County Judge may correct mistakes in the Voters' List without previous complaint.

(a) This section gives very enlarged powers to the County Judge to correct misnomers of persons, and mistakes in respect of the entry of their qualifications on the Voters' List. The jurisdiction to correct arises only when an appeal or complaint against the right of a person's name to be entered on the list is pending before the Judge. The person attacked may then, without any previous notice of appeal or complaint in that behalf, apply to the Judge to correct such misnomer or mistake. When the case reaches that stage, the Judge may apparently disregard the notices of

any Voters' Lists in respect of the name (*b*), or place of abode (*c*), or nature of the qualification, or the local or other description of the property (*d*), of any person entered on the said list, and against or with respect to whose right to be entered on said list any appeal or complaint is either pending before or being heard by the Judge: but in any such case, evidence may be produced and given before said Judge that such person has no qualification or no sufficient qualification in law to entitle such person to vote, and if the Judge, on the evidence before him, be of opinion that such person has not such qualification, he shall expunge and strike the name of such person from said list of voters (*e*).

complaint served, and allow evidence to be adduced impeaching the qualification of such person to be on the list in any event; and if on such evidence he finds that such person has no qualification, he is to expunge the name from the list of voters.

(*b*) As to misnomers see note (*a*) p. 34.

(*c*) There is no column in the form of Voters' List for "the place of abode" of persons entered upon the Voters' List. But by sec. 2, pp. 19, 20, the Clerk in preparing the Voters' Lists is directed to enter "the place at which the voter resides in the municipality." It is enough to mention the place of abode in the address only: *Barclay v. Parrott*, 1 C. B. N. S. 49. See also note (*t*) p. 16.

(*d*) The mistakes which may be corrected, may be mistakes of municipal officers: *Wood v. Willesden*, 2 C. B. 15; respecting property wrongfully described or omitted from the register: *Ballard v. Robins*, 3 C. P. D. 92; or mistakes of the printer in printing the lists: *Mathers v. Overseers of Allendale*, L. R. 6 C. P. 272.

(*e*) Under the Act 41 and 42 Vic. cap. 26 (Imp.), the Revising Barrister has discretionary power to correct mistakes

3. If on any complaint or appeal to strike out of the list the name of any person entered therein as a voter, the Judge, from any evidence produced and given before him, shall be of opinion that such person is entitled to be entered on said list in any character, or because of property or qualification other than that in which such person is so already entered in said list, the said Judge shall not strike the name of such person from said list; but shall make such corrections in the said list as the said evidence in his opinion may warrant with respect to the right, character and qualification of such person to vote (*f*).

On appeals
Judge to
correct list
as evidence
warrants.

in claims or notices of objection, and in the register of voters; to require notice to be given before expunging names; to retain names not objected to where the objector does not appear; to insert a qualification of another nature than that specified in list, or claim; to expunge the names of persons insufficiently qualified, or incapacitated, or dead.

(*f*) This section is a collorary to the preceding section, and it gives a County Judge jurisdiction, on an application to strike out the name of any person, to hear evidence establishing the right of such person to be retained on the list in another character, or for another qualification. The powers here given may be said to increase the facilities of persons having the proper franchise qualifications being retained on the list, while it decreases the facilities of objectors in making purely technical objections. Where, prior to this statute on an appeal against a voter's name as entered on the Voter's List, it appeared that he was not qualified as described on the list, but in another right not described, if the omission to insert the proper qualification was the fault of the Clerk, it was held to be the duty of the Judge, on the hearing of the appeal, to correct the list: *Per Patterson, J. A.; Opinions on the Voters' Lists Act, Case 2, (Appendix)*. A person who was residing and working on

New sub-
sec. for sub-
sec. 3 of sec.
8, R.S.O.
cap. 9.

4. Sub-section three of section eight of *The Voters' Lists Act* is hereby repealed, and in lieu thereof, the following is substituted as sub-section three of said section eight : [*See the amended sub-section on page 38 (g)*].

Addition to
sub-sec. 1
of sec. 12,
R.S.O.
cap. 9.

5. Sub-section one of section twelve of *The Voters' List Act* is hereby amended by adding thereto the words following : [*See the added sub-section on page 62*].

New sec.
for sec. 15,
41 Vic. cap.
21.

6. The fifteenth section of *The Voters' List Finality Act* is hereby repealed, and the following substituted therefor : [*See the amended section on page 123 (h)*].

Sec. 16 of
R.S.O. cap.
9 amended.

7. The words "and the Clerk shall receive reasonable compensation for the services performed," where they occur in the sixteenth section of *The Voters' Lists Act*, are hereby repealed (i).

the farm with his father under the promise of a deed of part of the farm, and who had been entered on the Assessment Roll and Voters' List as "owner," may be retained on the Voters' List, and the Judge may add to his description "Farmer's son :"
Per Moss, C.J.A., Opinions on the Voters' Lists Act, Case 8, (Appendix). The appearance of a voter's name on the Voters' List in respect of other real property or income for which he is assessed, does not prevent him being entered for property not assessed to him, but in respect of which he would have the right to vote had he been assessed for it : *Per Moss, C.J.A., Ibid., Case 16, (Appendix).*

(g) See notes (g) to (i) pp. 38, 39.

(h) See notes (k) and (m) pp. 123-125.

(i) See note p. 71.

8. Hereafter the Clerk of each township municipality, in making out the list of voters as required by section two of *The Voters' Lists Act*, the list shall, besides complying with section 12 of *The Act to amend the Jurors' Act*, passed in the present session (j), insert in said list, and according to the form by section nine of this Act provided, a schedule containing the name numbered consecutively, of each post office, which by the Assessment Roll appears to be, or within the knowledge or belief of the said Clerk is, the proper post office address of any person entered in said list, and in making out said list of voters, shall, according to said form and in the proper column therefor, insert opposite the name of each person entered in said list the consecutive number which according to said schedule is that of

P. O. Address of voter to be entered on Voters' List.

(j) This section of the amended Jurors' Act, 42 Vic. cap. 14 (O.), requires the Clerk in making out the Voters' List to write in the column of the voter's number, or in a separate column, the letter J, opposite the name of every male person over 21 and under 60 years of age, who by the roll appears to possess the qualification requisite to qualify him to serve as a juror; and to show at the end of such list the aggregate number of names of persons qualified to serve on juries. And in townships the Clerk is to ascertain in the manner prescribed by sec. 6 of R. S. O. cap. 48, the number of persons who are qualified to serve on juries, and to certify on the Voters' List the number so qualified. The qualifications of persons who are to be selected as jurors are: Persons (1) over 21 years of age who are in the possession of their natural faculties, and not infirm or decrepid; (2) assessed as owner or tenant for local purposes upon property, real or personal, belonging to him on his own right, or in that of his wife, of the value of not less than \$600 in cities, and \$400 in towns incorporated villages and townships.

the proper post office address of such person (*k*), so far as such address appears by the Assessment Roll, or is within the knowledge or belief of the said Clerk as aforesaid; but no appeal or complaint on the ground of any error, mistake or omission in or from the said list in respect of any matter or thing by this section directed to be inserted therein as aforesaid, shall be made or allowed by or under *The Voters' Lists Act*, *The Voters' Lists Finality Act*, or this Act (*l*).

(*k*) The name of a voter was entered on the register of voters for a certain property in a parish, and with a certain post office address. The overseers knowing that he had left the property, and was then occupying another property, altered his qualification by substituting the property actually occupied by such voter. On his name being objected to, the notice of objection was sent by post to the true address of such voter, and not to his former post office address. The voter contended before the Revising Barrister that the service of the notice of objection was insufficient, but his contention was over-ruled: *Held*, that the action of the overseers did not release the objector from the requirements of the Act, viz., sending the notice properly directed to the voter at his place of abode as described in the register of voters; and that as the objector had failed to prove service of the notice of objection as required by the Act, the Revising Officer had no jurisdiction to expunge the name of the voter: *Noseworthy v. Buckland in the Moor*, L. R. 9 C. P. 233. But see *Norris v. Pilcher*, L. R. 4 C. P. 417.

(*l*) But the County Judge in correcting the voter's "place of abode," as allowed by sec. 2 of this Act, p. 128, may without any appeal or complaint enter opposite to such voter's name his proper post office address.

9. Instead of the form of Voters' List required by section two of *The Voters' Lists Act*, the form ^{New Form for Voters' Lists.} for such list hereafter to be used and made by the Clerk of any township municipality under the provisions of said section two and of this section, and section eight of this Act shall be as follows (m) : [*See Schedule of Forms in the Appendix*].

(m) See note (h) p. 99. The Form will be found in the Appendix as "Form 1."

An Act to further amend the Voters' Lists Act.

48 VICTORIA, CHAPTER 3.

[Assented to 30th March, 1885.]

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Short title. **1.** This Act may be cited as *The Voters' Lists Amendment Act, 1885.*

New sec. for sec. 2 R.S.O. cap. 9. **2.** Section 2 of *The Voters' Lists Act* and its sub-sections, are hereby repealed, and the following is substituted therefor: [*See the amended section on pages 2-22 (a)*].

Form of Voters' List, 42 Vic. cap. 3, sec. 9. **3.** The expression "Form 1," in section 2 of *The Voters' Lists Act*, as amended by this Act, shall mean the form of Voters' List to be used and made as provided by section 9 of *The Voters' Lists Amendment Act, 1879 (b)*.

(a) See sec. 2, and the notes thereto, pp. 2-22.

(b) In addition to the particulars required by the form of Voters' List here referred to, the Clerk is required to state the place at which the income voter or landholder's son or wage-earner "resides in the municipality," (see pp. 19-21); and also "in the column containing the number of the voter,

4. Section 8 of *The Voters' Lists Act* and its sub-sections are hereby repealed, and the following is substituted therefor: [See the amended section on pages 31-41 (c)].

New sec. for
sec. 8 R.S.O.
cap. 9.

5. Sub-section 3 of section 8 of *The Voters' Lists Finality Act* is hereby repealed (d).

41 Vic. cap.
21, sec. 3,
sub-s. 3,
repealed.

6. Any landholder's son and any wage-earner entitled as such to be assessed or to have his name entered in the Assessment Roll of any municipality, shall be so assessed and shall have his name so entered without any request in that behalf, unless he informs or notifies the assessor to the contrary(e); and any person entitled to be

Entry of
landhold-
ers' sons
and wage-
earners on
Roll.

or in a separate column provided for the purpose, beside the same write or mark, the letter J," opposite the names of those qualified to serve as jurors: 42 Vic. cap. 14, sec. 12.

(c) See sec. 8, and the notes thereto, pp. 31-41.

(d) The clause repealed provided that on a scrutiny, the votes of income voters who had not paid their municipal tax on income within the time required by law, should be struck off the poll. By clauses 2 and 3 of *secondly*, in sec. 7 of the Election Act, income voters were required to pay their municipal tax on income, according to the following dates: (1) If the collector's roll had been for over one month in the collector's hands, then the taxes for that year must have been paid before the date of the writ of election. (2) If such collector's roll had not been for one month in the collector's hands, or had not been delivered to the collector, then the taxes for the preceding year must have been paid on or before the 31st December of the year for which they were levied. These clauses were repealed by 48 Vic. cap. 2.

(e) There is a direct repugnancy between the provisions of the *Assessment Amendment Act, 1885* (48 Vic. cap. 42), and

entered in such Assessment Roll or in the Voters' List based thereon, or to vote or to be a voter in the Electoral District in which said Municipality

this Act (48 Vic. cap. 3) respecting wage-earners, both of which Acts received the Royal Assent on the 30th March, 1885. This Act (cap. 3, sec. 6) provides that "any wage-earner entitled as such to be assessed or to have his name entered in the Assessment Roll of any municipality, shall be so assessed, and shall have his name so entered *without any request on that behalf*, unless he informs or notifies the assessor to the contrary." But the *Assessment Amendment Act*, 1885 (cap. 42, sec. 5) provides that "the name of a wage-earner *shall not be entered* in the Assessment Roll as such wage-earner *unless to the assessor*, or to one of the assessors, if there is more than one, *there has been first delivered by or on behalf of said wage-earner, a written affirmation made and signed by him*," in the form given in the Act. And the section adds: "Such written affirmation must have been so made and signed by such wage-earner in the presence of an attesting witness within one month prior to its being so delivered as aforesaid to the assessor; and said attesting witness shall subscribe his signature as such to said affirmation, and shall add thereto his place of residence and occupation." In addition to these provisions the assessor has to attach to his roll a certificate under oath, in which he states that he has entered the names of all persons "who have required their names to be entered therein," and "of every person entitled to be so entered either as a landholder's son, or as a wage-earner." And sec. 10 of the Act cap. 42 re-enacts the words of the above sec. 6, prefixing to its enactment the words: "*subject to the other provisions of this Act.*" With such marked repugnancy between the provisions of two statutes assented to on the same day, and relating to the same right of wage-earners to the Franchise, municipal officers may find it difficult to obey both. The rules applicable to the construction of such statutes are thus stated: "Where two Acts of Parliament repugnant to

is situate, shall, in order to have the name of such landholder's son or wage-earner entered and inserted in such Assessment Roll, or List of Voters, as the case may be, have for all purposes the same right to apply (*f*), complain or appeal to

each other come into operation on the same day, the one which last received the Royal Assent virtually repeals the other:" *Rex v. Middlesex Justices*, 2 B. & Ad. 818. When the later of two enactments is couched in terms which are negative in form, or in effect, it is difficult to avoid the inference that the earlier one is impliedly repealed by it: *Maxwell on Statutes*, 134. When two passages of an Act are so repugnant as to be mutually destructive, the earlier passage gives way to the later, which is taken as in a will, to speak the latest intention: *Ibid.* 46. "If two parts of the will are totally irreconcilable, I know of no rule but by taking the subsequent words as an indication of a subsequent intention. The Court is in a dilemma, and cannot act at all unless they do that:" *Per* Sir R. P. Arden, M. R., in *Sims v. Doughty*, 5 Ves. 247. The question whether the negative clauses (sec. 5) of cap. 42 have been repealed by sec. 10 of the same Act, or by the above sec. 6 of cap. 3, will have to be judicially determined. In construing the two Acts it must be borne in mind that though both were assented to on the same day, the above clauses of both Acts were not to come into operation until the 1st day of January, 1886, "except as to any Assessment Roll, or assessment, taken or made subsequent to the 1st day of July next, after the passing thereof, under the special provisions of section 44 of *The Assessment Act*; and with respect to any such last mentioned assessment roll or assessment, and any list of voters based thereon, this Act shall for all purposes, and as regards all matters, liabilities, duties and proceedings therein provided for, be deemed to come into force and have effect on and after said 1st day of July." See sec. 12, *post*, and sec. 18 of 48 Vic. cap. 42.

(*f*) See notes p. 32.

any Court or to any Judge in that behalf, as such landholder's son or wage-earner would or can have personally, unless it is made to appear to the Court or Judge that such Landholder's Son or wage-earner actually dissents therefrom.

R.S.O. cap.
9, sec. 10, re-
pealed.

7. Section 10 of *The Voters' Lists Act* and its sub-sections are hereby repealed, and the following is substituted therefor: [*See the amended section on pages 51-58 (g)*].

Time for
transmis-
sion of list
under
R.S.O. cap.
9, ss. 3 & 4.

8. For the purpose of complying with the provisions and requirements of sections 3 and 4 of *The Voters' Lists Act*, the Clerk of any city shall hereafter have forty days instead of the thirty days in said section 3 mentioned (*h*).

R.S.O. cap.
9, sec. 5,
repealed.

9. Section 5 of *The Voters' Lists Act* is hereby repealed, and the following is substituted therefor: [*See the amended section on pages 28, 29 (i)*].

R.S.O. cap.
9, sec. 9,
amended.

10. Section 9 of *The Voters' List Act* is hereby amended by adding thereto the following sub-section: [*See the amended section on page 51 (j)*].

(*g*) See section 10 and the notes thereon, pp. 51-58.

(*h*) This gives Clerks of Cities forty days after the final revision of the Assessment Roll, for the preparation, printing and posting of the Voters' Lists for such cities. See p. 23.

(*i*) The only amendment made by this substitution is that the certificate of the Clerk shall show that the list contains the names of persons entitled to vote at elections for the Legislative Assembly, "and at municipal elections in said municipality." See p. 28.

(*j*) See note (c) p. 51.

11. (1) From and after the passing of this Act, and until the preceding sections of this Act are in force, section 2 of *The Voters' Lists Act* shall be read (k):

Construction of
R. S. O.
cap. 10,
sec. 2.

(a) As if the word "male," where it firstly occurs in said section, were omitted therefrom; and

(b) As if before the word "appearing," where it occurs in sub-section 3 of said section 2, the words "and of all widows and unmarried women of full age and subjects as aforesaid" were inserted therein (l).

(2) Said section 2 shall be read and construed as if this section had been in full force and effect on, from and after the 25th day of March, 1884.

12. The several sections and provisions of this Act shall come into force and have effect as follows:

Commencement of
Act.

(1) Section 11 shall come into force and have effect from and after the passing of this Act.

(k) The effect of this clause—which came into effect "from and after the passing of the Act,"—was to make the special amendments noted in it, operative on *The Voters' Lists Act* (R. S. O. cap. 9.) before the other amendments made by this Act came into effect.

(l) The Municipal Amendment Act, 1884 (47 Vic. cap. 32, sec. 3) conferred the municipal franchise on "widows and unmarried women," but made no provision for the entry of their names on the Voters' List. The above amendment was intended to remedy that defect in the legislation of 1884.

(2) The remaining sections and provisions of this Act shall come into force and have effect on and after the first day of January next after the passing thereof, except as to any Assessment Roll or assessment taken or made subsequent to the first day of July next after the passing thereof, under the special provisions of sections 44 of *The Assessment Act*; and with respect to any such last mentioned Assessment Roll or assessment, and any list of voters based thereon, this Act shall for all purposes, and as regards all matters, liabilities, duties and proceedings therein provided for, be deemed to come into force, and have effect on and after said first day of July (*m*).

(*m*) The apparent effect of this clause is to make the Act operative in respect of the making of the Assessment Roll and of the classes of persons to be entered thereon, in municipalities where the Assessment Roll is prepared between the 1st July and 30th September under section 44 of the Assessment Act. A similar clause appears in *The Assessment Amendment Act*, 1885, sec. 18, sub-sec. (2). See note (*e*) p. 4, and note (*e*) p. 135.

An Act respecting Elections of Members
of the Legislative Assembly (a).

REVISED STATUTES OF ONTARIO, CHAPTER 10.

HER MAJESTY, by and with the advice and
consent of the Legislative Assembly of the
Province of Ontario, enacts as follows :

1. This Act may be cited as "*The Election* Short Title
Act," or "*The Election Act of Ontario*" (b).

(a) Only those sections of the *Election Act* and *The Franchise and Representation Act*, 1885, which define the qualification of voters at Legislative elections, are here given, as the other sections relate almost exclusively to the procedure at elections, and the definition of and penalties for corrupt practices.

(b) The theory of our political system is that the ultimate sovereignty is in the people, from whom springs all legitimate authority. In England, where the people do not debate in a collective body, but by representation, this sovereignty consists in the election of representatives: 1 *Bl. Com.* 170. In the election of knights, citizens, and burgesses consists the exercise of the democratical part of our Constitution ; for in a Democracy there can be no exercise of sovereignty except by Suffrage, which is the declaration of the people's will. In all Democracies, therefore, it is of the utmost importance to regulate by whom and in what manner the suffrages are to be given: *Ibid.* Prior to the early statutes regulating the franchise for Parliamentary electors in England, a franchise had been sanctioned by

Interpreta-
tion.

2. [As amended by 48 Vic. cap. 2:] Unless otherwise declared or indicated by the context,

the Common Law of Parliament, which was more liberal and more nearly akin to "Manhood Suffrage" than it has been since. By that common law franchise, "*every inhabitant and commoner in every county had a voice in the election of knights, whether he were a freeholder or not, or had a freehold of only one penny, sixpence, or twelve pence by the year:*" *Prynne's Brevia Parliamentia* (1662) 187. "The common law placed all elections in the hands of the people:" *Hudson on Elections*. And the only qualification required of Parliamentary electors was *residence* in the county: 1st Henry V, cap. 1. The return by sheriffs on many Parliamentary Writs in 18 Edward II, is that "the election has been made by the assent and will of the *men* of the whole county:" *Palgrave's Parliamentary Writs*, 319. In 1429, the Act 8 Henry VI. cap. 7, defining "what sort of men shall be choosers and who shall be chosen Knights of Parliament," established the rule that an elector's political intelligence and qualification to vote should be gauged by the value of his property; and it required that electors should be residents and have a property qualification as freeholders to the value of 40s. in the county. The preamble recites, with a plainness of speech not to be found in modern Acts, that "whereas the election of knights of shires to come to the Parliaments of our Lord the King in many counties of the realm of England, have now of late been made by very great, outrageous, and excessive number of people, dwelling within the said counties, of the which most part was of *people of small substance and of no value*, whereof every of them pretended a voice equivalent, as to such elections to be made, with the most worthy knights and esquires dwelling within the said counties, whereby manslaughter, riots, batteries and *divisions among the gentlemen and other people* of the same counties, shall very likely rise and be, unless convenient and due remedy be provided in this behalf." "It is not clear whether any landed or freehold qualification was requisite to entitle a

wherever any of the following words or expressions occur in this Act, they shall have the meanings hereafter expressed (c), that is to say: ^[48 Vic. cap. 2, sec. 2.]

1. The word "owner" (d) shall signify and Owner.

person to vote at elections before this statute:" *Simeon on Elections*, 13. "This was the first statute which required a qualification of landed property, or, to speak in a manner more strictly constitutional, which deprived persons in a very low and dependent situation of the exercise of the privilege of voting:" *Ibid.* 59. "This statute first required the electors to have a qualification of freehold to a certain value, thereby, as some think, restoring the aristocratic spirit of the Constitution, which had been lately broke in upon; or as others assert, making an inroad upon the liberties of the people by depriving the lower class of a privilege they had always enjoyed before:" *Heywood on Elections*, 23. "The statute (8 Henry VI.) presents a strong contrast to the legislation of the preceding reigns. The policy of former Parliaments had been to secure the whole body of the county population in the free and independent exercise of their electoral rights. Several reasons are assigned in the preamble for restricting the franchise. The true grievance appears to have been, not the mere number of the lower class of electors, but that their votes were of equal weight with those of persons of gentle (*gentil*) condition:" *Cox's Ant. Parly. Elections*, 113.

(c) See note (b) p. 102.

(d) A similar definition of "owner" is given in the *Municipal Act* (R. S. O. cap. 174, s. 76) and in the *Assessment Act* (R. S. O. cap. 180, sec. 20, rep. 1885.) The word "freeholder" appearing on the Assessment Roll pursuant to the *Assessment Act*, shall, for the purposes of the *Voters' Lists Act*, mean "owner:" (R. S. O. cap. 9, sec. 33). In the *Mechanics' Lien Act*, R. S. O. (cap. 120, sec. 2.) the term "owner shall extend to and include a person having any estate or interest, legal

mean proprietor, either in his own right (e) or

or equitable, in the lands upon or respect of which the work is done," &c., and all persons claiming under him, whose rights have been acquired after the work, &c., is commenced. In the *Railway Act* (R. S. O. cap. 165, sec. 3) "owner shall be understood to mean any corporation or persons who would, under the Act, &c., be enabled to sell and convey the lands to the company." In the *Assessment Act* (R. S. O. cap. 180, sec. 169) the words "original owner shall include and extend to any person who at the time of such sale (for taxes) was legally interested in the said land sold, and all persons claiming through or under him." In the *Public Schools Act*, 48 Vic. cap. 49, sec. 2, "owner shall include a mortgagee, lessee, or tenant, or other person entitled to a limited interest." The word "owner" is a modern term in titles to real estate; but it is here used as a definition of a class of voters, rather than as indicating a person having a perfect or absolute title in fee simple. In the language of the law every possessor of real property is a tenant; as tenant in fee, tenant in tail, tenant for life, tenant for years, or tenant at will. The tendency of modern law has been to drop the theory of feudal service in the tenure of lands, and to provide that lands shall be held by allodial tenure simply. "Tenant in fee simple is he who hath lands to hold to him and his heirs for ever; and it is called in Latin *feudum simplex*, for *feudum* is the same that inheritance is; and *simplex* is as much as to say lawful and pure." 1 *Co. Litt.* 483. Tenant signifieth the tenure or the service whereby the lands are holden; and because such services were done with their ploughs this tenure was called tenure in soccage: *Ibid.* 331. All the lands or tenements in England in the hands of subjects are holden mediately or immediately of the King: for in the law of England we have not properly *allodium*, that is, any subject's land that is not holden: *Ibid.* 488.

(e) "Proprietor in his own right." These words in the several classes of the real property qualifications under this

Act exclude trustees, or persons holding the dry legal estate in lands without any beneficial interest therein. Trusts were unknown to the common law, and if a trust of lands was created the trustee in whom they were vested was alone considered the owner. "The legal owner holds the direct and absolute dominion over the property in the view of the law, but the income, profits, or benefits thereof in his hands belong wholly, or in part, to others:" *Story's Eq. Juris.* sec. 964. The statutes which required a qualification of value excluded the mere trustee from the franchise: *Hudson on Elections*, 79. The consequence was, that till 1696 all persons whose lands were subject to any trust or mortgage were incapacitated from voting: *Rogers on Elections*, 33. In 1696 the Act 7 & 8 Wm. III. cap. 25, sec. 7 (*Quære* if in force in Ontario by R. S. O. cap. 92), provided that no person should be allowed to vote by reason of any trust estate or mortgage, unless such trustee or mortgagee was in actual possession or receipt of the rents and profits of the said estate; but the mortgagor or *cestui que trust* in possession should vote for the said estate. The Reform Act, 2 Wm. IV. cap. 45, sec. 23 (Imp.) contained similar provisions; but doubts having arisen as to their meaning, the Registration Act, 6 Vic. cap. 18, sec. 74 (Imp.) enacted that no mortgagee should vote unless in actual possession or receipt of the rents and profits, but that the mortgagor in actual possession or receipt of the rents and profits might vote; and that no trustee should in any case have a right to vote at any election by reason of any trust estate; but that the *cestui que trust* in actual possession, or in receipt of the rents and profits, though he receive them through the hands of the trustee, might vote. A trustee under a will, who has no beneficial estate or interest in the property assessed to him, is not entitled to vote: *South Grenville (Jones's Case)*, H. E. C. 163. Mortgagor or mortgagee, if in possession, may vote: 1 *Stephens on Elections*, 457. Mortgagor out of possession, where the property was of greater value than the mortgage: *Held*, entitled to vote: *Middlesex (Chase's Case)*, 2 Peck. 103. Besides trust estates which do not confer the right of voting, there is a class of trust estates in which the chief beneficial

In right of in the right of his wife (*f*), of an estate for wife.

interest passes to the trustee; such as estates conveyed to a lender in trust for the repayment of money, and which were introduced to obviate the inconvenience arising from the common law of mortgages, and with a view to the remedy by sale. From this two classes of securities have arisen: (1) one an absolute conveyance in fee, or for years, without any condition for re-entry for nonpayment, but with a covenant, or proviso, requiring the lender to reconvey on payment of the debt. This, for want of a more appropriate name, is called a mortgage; (2) the other, a conveyance by the borrower to the lender, or his nominee, in trust to sell if the debt is not paid after a certain period. In legal strictness both securities are merely conveyances in trust, the party to whom the legal estate is thus conveyed is properly a trustee. The enactment of 1696 may therefore be thus paraphrased: No creditor will be allowed to vote by reason of any such conveyance upon trust, unless such creditor, so being trustee or mortgagee, be in actual possession or receipt of the rents and profits of the estate: 1 *Stephens on Elections*, 459. Where land was granted by letters patent to A, her heirs and assigns for ever, to have and to hold to her the said A in trust for herself and her children M and F: *Held*, that A took the fee, and that no legal estate passed to the children: *Goldie v. Taylor*, 13 U. C. Q. B. 603.

(*f*) "Proprietor in the right of his wife." The phrase "in the right of his wife" first appeared in the Parliamentary Franchise Act of 1859, 22 Vic. cap. 82, sec. 23, and in the Municipal Act of 1849, 12 Vic. cap. 81; and it has been continued in subsequent Acts on the same subjects, notwithstanding the legislation which under the Married Women's Property Acts have divested the husband of all estate in the real property of his wife. This definition given above is based upon the rule of the common law that a husband by his marriage acquired a freehold interest *jure uxoris* during the joint lives of husband and wife in his wife's freehold for

life, and her freehold of inheritance, even before the birth of issue: *Bright's H. & W.* 112. That where an estate in fee comes to a *feme covert*, the interest of the husband and wife in the estate is a seisin in fee in both, in right of the wife: *Polybank v. Hawkins*, Doug. 329. And upon his having issue by her born alive who could inherit the estate, he becomes tenant by the curtesy, which entitles him to an estate in his wife's freehold for his life after the death of his wife: 1 *Bright's H. & W.* 116. But if the husband is an alien, he will take no interest in his wife's real estate: *Ibid.* 9. Nor will he, while an alien, be entitled to any tenancy by the curtesy therein: *Ibid.* 125. Nor will an alien acquire any right in his wife's leaseholds: *Theobald v. Duffoy*, 9 Mod. 104. In a Court of Equity (though not in law) *baron* and *feme* are considered as two different persons: 3 *P. Wms.* 38 n. Where a gift was made, or an estate was conveyed, to a husband and wife and a third person, the husband and wife, being in legal fiction one person, took only one-half of the gift or estate, and the third person the other half: 1 *Co. Litt.* 739; *Dias v. DeLivera*, 5 App. Cas. 135. Where a married woman obtained a grant of lands under letters patent from the Crown, her husband need not have entered upon the land in order to entitle him to tenancy by the curtesy, the letters patent *suo vigore* constituting seisin in fact: *Weaver v. Burgess*, 22 U. C. C. P. 104. A grant to a married woman of a life estate in lands does not require the assent of her husband to pass the title to her; and unless he repudiate it in some way, both will be seised in her right: *Nolan v. Fox*, 16 U. C. C. P. 565. Though a man has been in possession for twenty years of lands granted to his wife for life, he does not thereby acquire a title by virtue of the Statute of Limitations, for he is merely seised with her, by operation of law, of her estate therein: *Ibid.* Where it is sought to establish a marriage by repute, it is essential that such repute should be general and uniform; a divided repute will not suffice: *Henderson v. Weis*, 25 Gr. 69. Where recent Ontario legislation has not altered the common law doctrines respecting the property of married women, the right of the husband to vote as "proprietor in right of his wife" will be

governed by the old decisions. By the common law the husband has the right to vote in respect of his wife's freehold property, as having acquired the estate by marriage: *Rogers on Elections*, 159. So that if an estate should descend to any number of females the husband of each would have a right to vote: 1 *Co. Litt.* 59. A husband, while possessed in the right of his wife, has the same right of voting as if possessed in his own right: 1 *Stephens on Elections*, 513. But in all these cases of freeholds *jure uxoris* it is the *beneficial* freehold, not the mere legal estate, which confers the vote on the husband: *Ibid.* 516. Where the marriage had taken place before the Married Women's Property Acts, and the husband's right had become a vested interest in his wife's real estate, his occupancy of such real estate would give him the enjoyment of the revenues and profits thereof for his own use in right of his wife. "Upon such marriage the husband became entitled, by the law of England, to the rents and profits of the wife's estate during the joint lives of the two:" *Per North, J.*, in *Fowke v. Draycott*, 29 Ch. D. 999. Prior to the changes made in the common law doctrines by the Married Woman's Property Acts, a husband excluded by a marriage settlement from all interest in his wife's estate, could not vote: *Rogers on Elections*, 35. Where, by a marriage settlement, property is vested in trustees for the separate use of the wife, or where property, after the marriage, is conveyed or devised to trustees for the separate use of the wife, the husband takes no interest in such property, and can by no means vote in respect thereof: *Elliott on Parly. Electors*, 15. So where the intention appears that the property bequeathed to, or settled upon, the wife should be to her sole and separate use, whether given to her without the intervention of trustees, or to her husband for her, a Court of Equity will effectuate the intention by converting the husband into a trustee for the wife: *Ibid.* Where there is a settlement to a wife's separate use, the husband acquires no interest in her property: *Scarborough v. Borman*, 1 Beav. 34; s. c. 4 Jur. 38. And such settlement to her separate use, though made while she is *discovert*, is good against an after-taken husband: *Tullett v. Armstrong*, 4 My. & Cr. 377; s. c. 4 Jur. 34. No

technical words are necessary to raise a trust for such separate use: 9 *Jarm. Convey.* 102. "Enjoy the profits," imply separate use: *Tyrell v. Hope*, 2 Atk. 361. So, "to be at her own disposal:" *Pritchard v. Ames*, T. & Russ. 222; or "for her livelihood": *Darley v. Darley*, 3 Atk. 399; or, "her receipt to be a sufficient discharge:" *Lee v. Prieux*, 3 Br. C. C. 381; or, "to deliver securities to her whenever demanded:" *Dixon v. Olmuis*, 2 Cox 414; or, "to pay into the proper hands of A:" *Hartley v. Hurle*, 5 Ves. 540. Where the property is separate estate, the whole revenues and profits belong to the wife as if she were sole, or unmarried. And should the husband claim a proprietary right in such property of his wife, the wife is entitled to an injunction restraining him from asserting any such right, or from interfering with her property: *Symonds v. Hallett*, 24 Ch. D. 346. Where one C. married a widow who was entitled to an estate tail, and previous to the marriage C. and his intended wife joined in a deed to V. as trustee, in which C. covenanted with the trustee V. that the rents and profits should remain to the separate use of the wife, that the wife might dispose of the estate, and that he would join in all necessary acts for rendering her disposal valid; it was contended that, as C. had no right to receive any profits from the land, it could not be said that he had any freehold which would entitle him to vote: *Held*, that C. had no right to vote: *Bedfordshire, (Conquest's Case)*, 2 Lud. 422. As C. had no right to receive any profit from the land, it could not be said that he had a freehold of the value of 40s. a year, and upon this ground the vote was rejected: 1 *Stephens on Elections*, 516. Where the wife's estate was assessed in the name of the wife and of her tenant, it was held that the husband could not vote: *Bedfordshire, (Brasier's Case)* 2 Lud. 530. A wife's estate was assessed in the name of her guardian, from whom, on coming of age about two years before, she had obtained the possession; the husband, before and after his marriage, had been in the possession of the estate as tenant, and had been so assessed: *Held*, vote bad: *Ibid.* (*Joyce's Case*) 529. One R. claimed to be seised in fee in right of his wife under a devise to her *dum sola* to her

separate use. It was contended that an absolute estate having been given to the wife *dum sola*, the limitation to her separate use was repugnant to the nature of the estate limited to her, and was therefore void. This contention was held to be at variance with the long established doctrine of Courts of Equity, and R.'s vote was rejected: 1 *Stephens on Elections*, 513. Between the registration and the election, the voter, by a deed of separation between him and his wife, covenanted with her trustee that while they lived apart she should have "undisturbed possession" of the house for which he was on the register of voters, and that "if he should enter therein" he should "be deemed a trespasser:" *Held*, vote good: *Lichfield (Stringer's Case)*, Bar. & Aus. 372. According to the common law of Parliament, estates by the curtesy and in dower are estates for life, arising as they do out of marriage; and those entitled to such estates in right of their wives may vote without occupation: *Rogers on Elections*, 9. Tenants by the curtesy vote as freeholders: *Chambers on Elections*, 268. The second husband of a doweress is entitled to vote in respect of his wife's estate in dower, although such dower "has not been assigned or set by metes and bounds," provided he is in receipt of the profits thereof: 20 Geo. III., cap. 17, sec. 12 (Imp.) (*Quære* if in force in Ontario by R. S. O. cap. 92). The Ontario Election Law of 1868, by the definition of "owner," gave to a husband whose wife has an estate for life, or a greater estate, the right to vote in respect of his wife's property, and a petitioner having that qualification was held entitled to petition: *Prescott H. E. C.* 1. Where the owner of real estate died intestate leaving daughters, and the husband of one of such daughters leased the property and received the rents: *Held*, not entitled to vote: *Brockville (Leslie's Case) H. E. C.* 129. The recent legislation in Ontario respecting the Property of Married Women, and its effect on the husband's common law right to vote *jure mariti*, will require careful consideration in construing the above definition. R. S. O. cap. 125, and 47 Vic. c. 19, O. have made the property of a married woman (1) "separate estate;" have freed it from (2) the husband's

joint ownership; (3) and all his right to the rents, issues and profits thereof; have abolished (4) his tenancy by the curtesy, except where the wife had not disposed of her estate *inter vivos*, or by will. "The operation of this section [sec. 4, R. S. O. cap. 125] is to *divest* the husband of all estate and interest in the real estate of his wife": *Per Gwynne, J.* in *Merrick v. Sherwood*, 22 U. C. C. P. 477. "She is to hold it free from any estate of the husband during her life-time, or as a tenant by the curtesy, thus depriving him of any interest in her estate:" *Boustead v. Whitmore*, 22 Gr. 226. Such portions of the Act as would deprive parties of their vested rights, if held to affect women married before its passing, should be so read as not to interfere with such rights; while the portions of the Act which have not that effect should go into operation as regards women married before as well as after the 2nd March, 1872: *Adams v. Loomis*, 22 Gr. 99. It applies to lands acquired after that date by women who were married prior to the Act: *Ibid.* 24 Gr. 242; and also to marriages which take place after the Act: *Diagman v. Austin*, 33 U. C. Q. B. 190. The Act of 1884, 47 Vic. cap. 19, O.—based on the Imperial Act, 45 & 46 Vic. cap. 75—repeals R. S. O. cap. 125. and enables a married woman to convey her own real estate, or to release her dower in her husband's lands without her husband joining in the conveyance, (s. 22). See also, *Re Coulter & Smith*, 8 Ont. R. 536. "The Act [45 & 46 Vic. cap. 75, Imp.] makes such alterations in the relation of husband and wife that it severs that unity of person and divides that compound person, which the law formerly recognized, to such an extent as to render it wrong for the Courts now to apply the old principle, which was founded on unity of person:" *Per Chitty, J.*, in *Re March*, 24 Ch. D. 222. Marriage, and the acquirement of property by a married woman, subsequent to the Acts, give the husband no estate or interest in his wife's property, nor any right to enjoy the revenues and profits thereof; and the husband may be restrained by injunction from interfering with his wife's property. Under the Married Women's Property Acts a married woman carrying on a business of her own, may obtain an injunction restraining her husband

from interfering in her business, or removing any of her chattels; and she may also, under certain circumstances, have an injunction excluding her husband from the house: *Donnelly v. Donnelly*, 9 O. R. 673. And where the husband is not really desiring to use or to enter the house as a husband to enjoy the society of his wife, or to consort with her as his wife, an injunction will be granted to the wife restraining her husband from the proprietary use of the house: *Symonds v. Hallett*, 24 Ch. D. 346. "The old fashioned notion that women need legislative protection, even against their husbands, is fast fading in the light of modern legislation:" *Per Harrison, C.J.*, in *Kerr v. Stripp*, 40 U. C. Q. B. 134. "The right of possession of the property to which a wife is entitled to her separate use, is an exclusive right against her husband; and, whatever his rights are, he cannot authorize anybody to intrude on the possession of his wife's separate property:" *Per Lindley, L. J.* in *Weldon v. DeBathe*, 14 Q. B. D. 339. *Qæure*, if the husband has himself the right to enter such property: *Ibid.* A husband is entitled to maintain an action against his wife, and to charge her separate property for money lent to her, or money paid for her, at her request, after the marriage; but not for moneys lent or paid at her request before marriage: *Butler v. Butler*, 14 Q. B. D. 831. Under the Consolidated Municipal Act, 1883, 46 Vic. cap. 18 sec. 73 (O.), providing that the persons to be elected Mayors or Aldermen of a city should have at the time of the election, "in their own right or in the right of their wives, as proprietors or tenants, a legal or equitable freehold or leasehold:" *Held*, that this qualification as to property held in right of the wife had come down from a state of the law which was radically different from the present law as to the property of married women; and that the respondent who had no estate of freehold or leasehold of his own, but whose wife held at and subsequent to the municipal election a leasehold property sufficient to give the statutory qualification, and of which the respondent and his wife were in possession, was not qualified to be elected as Mayor: *Reg. ex rel. Felitz v. Howland*, 11 Pr. R. 264. In 1886 the above Municipal Act was amended by providing that the wife's property should qualify the husband to be

life (g), or any greater estate either legal or equitable (h).

elected to municipal office: 49 Vic. cap. 37, sec. 2. The result of the several cases here annotated appears to establish the following canons in franchise law: (1) That where the wife's real property has been settled upon her as "separate estate" or to her "separate use," the husband acquires no beneficial estate in such property, "in right of his wife," and has, therefore, no vote. (2) That recent Ontario legislation has made the wife's real property "separate estate," and has divested the husband of all estate and interest in his wife's real property; and having therefore no beneficial estate or interest in such property he has no right to qualify as a voter, or to vote in respect of such real property. (3) That such legislation affects marriages contracted, or property acquired by married women, since 1872; but not property acquired by the married woman nor the husband's right to vote as incident to his estate in such property which had become vested in the husband, prior to that date. See further note (k) to the clause defining "occupant."

(g) "An estate for life." The most ancient of estates is an estate for life. A grant of land to A. B., without any words of limitation, is the grant of an estate for life. A tenant either for his own life or for the life of another (*pur autre vie*), hath an estate of freehold; and he that hath a less estate cannot have a freehold: 1 Co. Litt. 623. All estates which may by possibility last for life although they may be determined before the life expires, are freeholds; 1 Co. Litt. 628. As an estate granted to a widow during widowhood though determinable on her marrying again. The following are estates for life: A grant to a man and woman during coverture. So long as the grantee dwells in such a house. So long as he pays a certain sum. A tenancy by the curtesy. *Ibid.* 621. One in possession of a house by virtue of an office for life: *Sone v. Ashton*, 3 Burr. 1287. The husband of a coparcener may vote: *Bedfordshire (Southwell's Case)*, 2 Lud. 447.

Prior to 1780 the practice was to exclude the votes of those who had married widows entitled to dower, where the dower had not been assigned to them by metes and bounds: *Gloucestershire*, Heywood 56. The 20 Geo. III., cap. 17, sec. 12 (1780), provided that when any woman, widow of a tenant in fee, and entitled to dower, married a second husband, such second husband should be entitled to vote in respect of such dower, although such dower had not been assigned by metes and bounds, provided he was in receipt of the profits of such dower, and that the estate from whence the same issued was rated, and contributed to the land tax. Whether this statute, being one relating to "civil rights," is in force in Ontario under the Upper Canada Act, 32 Geo. III., cap. 1 (R. S. O. cap. 92), has not been judicially determined. Prior to the recent Married Women's Property Acts, by the rules of the common law a husband by his marriage acquired a freehold interest *jure uxoris* during the joint lives of husband and wife in his wife's freehold for life, and her freehold of inheritance, even before the birth of issue: *Bright's H. & W.* 112. And upon his having issue by her born alive who could inherit the estate, he became tenant by the curtesy, which entitled him to an estate in his wife's freehold for his life after the death of his wife: 1 *Bright's H. & W.* 116. Estates by the curtesy and in dower are estates for life, arising as they do out of marriage, and those entitled to such estates in right of their wives, may vote without occupation: *Rogers on Elections*, 9. Tenants by the curtesy vote as freeholders: *Chambers on Elections*, 368. Lands were conveyed to the father and mother of A. for life, with power of appointment. They jointly appointed to A. in fee. This was held to operate as a good appointment of the father for his own life, and so A. had a freehold and might vote: *Gloucestershire*, Heywood 61. The reversioner of a freehold, if the estate is let for life, cannot vote at elections; but he may vote if the letting is for a term: *Chambers on Elections*, 599: *Heywood on Elections*, 60. A father, by his will, bequeathed his estate to trustees to pay out of the profits so much per week to his son J., and the reversion to his son T., on the death of J.: *Held*,

that J. had a right to vote, but T. had not: *Ibid.* 64. Where an annuitant was put into possession of the estate charged with the annuity: *Held*, entitled to vote: *Bedfordshire (Bonfield's Case)*, *Ibid.* 440. A charge on lands for support and maintenance during life, gives no legal estate in the lands: *Gilechrist v. Ramsay*, 27 U. C. Q. B. 500. A minister of a congregation occupying premises, "during his life if he should so long continue minister," has an equitable estate for life: *Burton v. Brooks*, 11 C. B. 41. So bedesmen of an hospital appointed for life and occupying the hospital: *Simpson v. Wilkinson*, 7 M. & Gr. 50. But not when the trustees have power to remove the inmates as they saw fit: *Davis v. Waddington*, 7 M. & Gr. 37.

(h) "Equitable estate." An equitable estate, but not an equitable right or interest, in lands confers the right to vote: *Elliott on Electors*, 53. Courts of Equity consider that which is agreed to be done as actually performed. So where a person has agreed to sell, and another has agreed to purchase, certain premises, the vendee being put into possession of the estate by virtue of the agreement; or becoming otherwise entitled to a specific performance of the contract; or when the vendor becomes a trustee for the vendee to convey to him the estate, the vendee has such an equitable estate as gives him a right to vote: *Seton v. Slade*, 7 Ves. 265; *Jennings v. Robertson*, 3 Gr. 513. But conditions may be introduced by which the vendee will not acquire an equitable estate: *Levy v. Lindo*, 3 Mer. 81; *King v. King*, 1 My. & K. 442. The question in the cases affecting the right of vendor or vendee, to vote, seems to be: who is to have the rents and profits of the estate, by virtue of the agreement, until the legal conveyance is made; or who must bear any loss which may happen, or be entitled to any benefit which may accrue, to the estate, between the agreement and the conveyance? *Rogers on Elections*, 33. If the vendee is in a position to compel a conveyance in a Court of Equity; if he has paid his purchase money, or a part of it, under an arrangement with regard to the remainder, and has been let into possession, which generally speaking amounts to an acceptance of

the title, little doubt can exist of his right to vote: *Rogers on Elections*, 34. Being in possession under a contract, whether it be for the fee or a term, a purchaser is in either as mortgagor or *cestui que trust*: *Moore v. Carisbrooke*, 12 C. B. 661. If there be any doubt as to what a Court of Equity would do, the vendee should be treated as having an inchoate right merely, but not an equitable estate: *Rex v. Geddington*, 2 B. & C. 129. Or that he has no estate, but an equitable right merely: *Rex v. Llantillio Grossemy*, 5 B. & C. 461. "A contract for valuable consideration, by which it is agreed to make a present transfer of property, passes at once the beneficial interest, provided the contract is one of which a Court of Equity will decree specific performance. In the language of Lord Hardwicke, the vendor becomes a trustee for the vendee:" *Per* Lord Westbury, L.C., in *Holroyd v. Marshall*, 10 H. L. C. 209. A. made a contract in writing for the purchase of certain lands, and paid the whole amount of the purchase money, but the conveyance was, at his own request, delayed. The land was unlet, and he had not taken possession of the land, nor exercised any acts of ownership thereon, he having allowed the vendor to remain in actual possession: *Held*, that A. was not entitled to vote: *Anelay v. Lewis*, 17 C. B. 316. There must be an actual possession, or receipt of the rent and profits. And it could not have been the intention of the Legislature to give to a person, who has a mere equity, a right of voting which the same person would not have had unless he had acquired a complete title both at law and in equity: *Per* Jervis, C.J., *Ibid*. A bare permission to receive the rents and profits of an estate unconnected with the legal interest in it, gives no right to vote; as where a voter has sold his estate to a person who at the sale executed a bond to permit him to receive the rents and profits for life: *Held*, that he had no right to vote: *Gloucestershire*, 1 *Stephens on Elections*, 456. So where a father alleged that the son virtually owned a certain unoccupied lot, of which he had no deed; the father collected the rent, in wood, from a tenant who leased it for the pasture, and paid over the proceeds to the son: *Held*, that the son had no vote: *Per* Richards C.J.,

in *Stormont (Braydon's Case)*, II. E. C. 21. Where A conveyed his lands to his father for certain promissory notes, but before the making of the Assessment Roll he made a parol agreement with his father for the re-purchase of the lands, on which the promissory notes were given up to A, but no reconveyance was executed by the father until after the revision of the Assessment Roll. A tenant occupied the house, but A boarded with him; and subsequently A leased one of the rooms for a lodge: *Held*, that A had an equitable estate in the lands from the time of the giving up of the notes: *Regina ex rel. Cheyne v. Tilt*, 7 U. C. L. J. 96. Where the voter was the equitable owner, the deed being taken in the father's name, but the son furnished the money, the father being in occupation with the assent of his son, and the proceeds not divided: *Held*, that being the equitable owner, notwithstanding the deed to the father, he had the right to be on the roll: *Stormont (Blair's Case)*, H. E. C. 21. So where a verbal agreement was made between the voter and his father before the preparation of the Assessment Roll, and on this agreement the voter from that time had exercised control, and had taken the proceeds to his own use, although the deed was not executed until after the revision of the roll: *Held*, entitled to vote: *Ibid. (Gollinger's Case)*. Where the voter had only received a deed of the property on which he voted after the revision of the Assessment Roll, but previous to that date had been assessed for, and paid taxes on the place, but not owning it: *Held*, that not possessing the qualification at the time he was assessed, or at the final revision of the roll, he was not entitled to vote: *Ibid. (Cahey's Case)*. Where a voter assessed for property sold it before the revision of the Assessment Roll, he was, *Held*, not entitled to vote: *South Grenville (Place's Case)*, H. E. C. 163. Where the father had made a will in his son's favor, and told the son if he would work the place and support the family he would give it to him; and the entire management remained in the son's hands from that time, the property being assessed in both names, the profits to be applied to pay the debts due on the place: *Held*, that as the understanding was that the son worked the place for the

support of the family, and beyond that for the benefit of the estate which he expected to possess under his father's will, he did not hold immediately to his own use and benefit, and was not entitled to vote: *Stormont (Weort's Case)*, H. E. C. 21. Where the owner of a lot told his son that he might have the lot, and to get a deed drawn, and the lot had been assessed in the son's name for some years, and was rented by the father to a tenant with the son's assent, the rent being paid to the father: *Held*, that as there was nothing but a voluntary gift from the father to the son, without possession, the son's vote was bad: *South Grenville (Lundy's Case)*, H. E. C. 163. Where a father, who resided on the lot, had made a will of the lot in favor of his son, who was assessed for it, and the son took the crops, except what was used by the father—the son residing on another farm: *Held*, the son had not such a beneficial interest in the lot as would entitle him to vote: *Ibid. (Mullins Case)*. Where A, who resided out of the riding, had made a contract to sell certain land to B, who was in possession of the land, but the deed had not been executed: *Held*, that A was a mere trustee for B, and had no right to vote: *Ibid. (Holden's Case)*. Where the property of an intestate was sold under a mortgage, and the deed made to his widow, but three of the sons furnished some of the purchase money, all being in possession, and the eldest son being assessed, it was *Held*, that, as the presumption from the evidence was that the property was bought for the widow, and not for the eldest son, he had no vote: *Ibid. (Morrow's Case)*. The receipt of rents and profits of an estate by one who is a stranger to the estate will give him no right to vote, nor will it deprive the real owner of his vote: *Gloucester*, 1 *Stephens on Elections* 457; *Bedfordshire (Trotman's Case)*, 2 *Luders* 431. Where a person assessed for land of which he had no title from the Crown, or by a tax sale, leased it to another, the fee of the land being in the Crown: *Held*, not entitled to vote: *Lincoln (2) (Clark's Case)*, H. E. C. 500. When the estate was devised to trustees to sell, for the payment of debts, and the surplus to be divided between A (the voter) B and C, and the estate had not been sold; it was argued that the remainder men

took an equitable interest: *Held*, vote good: *Middlesex (Rice's Case)*, 2 Peck. 106. When an estate has been devised to T in trust to pay legacies to the younger children, and T refused to take the land subject to the trust, but the younger children, with his consent, took possession of the land in satisfaction of their legacies: *Held*, they were purchasers for a valuable consideration, and that they were entitled to vote: *Ibid. (Smith's Case)*, 2 Peck. 424. Where a grantor conveyed an estate to trustees for the payment of debts out of the rents and profits, and to be re-conveyed when they were all paid, but at the election such debts had not been paid: *Held*, that the grantor was not entitled to vote: *Yorkshire, Heywood on Elections*, 108. Where a testator directed his real estate to be sold and the proceeds divided amongst his children, the children verbally agreed among themselves not to convert the property, but one of the children was a married woman having infant children: *Held*, that no election to extinguish the converting trust could be made, and therefore the testator's sons had not a legal or equitable estate in the land which would qualify them to vote: *Spencer v. Harrison*, 5 C. P. D. 97. Where the estate is under a trust for sale, the qualification to vote remains so long as the estate can legally be kept unconverted, but no longer: *Ibid.* An administrator cannot qualify on real estate, assessed in his own name, but belonging to the estate of the intestate: *Regina ex rel. Stock v. Davis*, 3 U. C. L. J. 128. The equitable interest in a term of years confers the right to vote: *Vance's Case*, Alc. Reg. Ca. 269. But such equitable interest cannot arise until the time for granting the lease has arrived: *Trotter v. Watson*, L. R. 4 C. P. 434. An equitable life estate in land gives the right to vote: *Roberts v. Percival*, 18 C. B. N. S. 36; *Roberts v. Drewett*, *Ibid.* 48; although there may be no legal conveyance of the estate, as in the case of a freehold interest in Benchers' Chambers in Lincoln's Inn: *Middlesex (Anstey's Case)*, 2 Peck. 109; or as in the case of an equitable freehold in lands held by the perpetual curate or incumbent of a parish: *Wallis v. Birks*, L. R. 5 C. P. 222; or by a minister of a congregation under the trusts of a deed: *Burton v.*

Occupant. 2. The word "occupant" (i) shall signify and

Brooks, 11 C. B. 41, s. c. 16 Jur. 569. See *contra*, *Collier v. King*, 11 C. B. N. S. 14, s. c. 8 Jur. N. S. 676. But not in respect of a church or cemetery, although the fees received therefor may be within the value prescribed, such fees not arising out of the land, but for services performed: *Kirton v. Dear*, L. R. 5 C. P. 217. The members of a partnership whose lands were vested in trustees for the benefit of the partnership, though deemed and considered as personal, and not real, estate: *Held*, that such partners had an equitable seisin in such lands to entitle them to vote: *Barter v. Newman*, 7 M. & Gr. 193, s. c. 9 Jur. 829. Where an association of persons had purchased land for a Stock Exchange, and vested it by deed in trustees upon such terms that the individual members of the association were respectively entitled only to a share in the net profits of the Exchange: *Held*, that such persons had not an equitable freehold in the land, only an interest in the profits of the concern, and, therefore, no right to vote, although the association was not incorporated, but was a mere voluntary organization without statutory powers or restrictions: *Watson v. Black*, 16 Q. B. D. 270. The members of a corporation which is seised in fee simple of lands, have no such estate legal or equitable in the lands of the corporation as gives them the franchise, although the individual shares of such members in the profits realized from such lands exceeds the amount of the statutory qualification: *Acland v. Jervis*, 9 C. B. N. S. 32, s. c. 7 Jur. N. S. 421. Nor have the proprietors of a music hall, vested in trustees who manage it for the general body, any equitable interest in the realty which would entitle them to vote: *Freeman v. Gainsford*, 18 C. B. N. S. 185. Nor have shareholders in a bridge company: *Wadmore v. Dear*, L. R. 7 C. P. 212; nor shareholders in an ordinary joint stock company: *Bulmer v. Norris*, 7 Jur. N. S. 342.

(i) The term "occupant" applies to persons occupying Crown Lands, under licenses of occupation from the Commissioner of Crown Lands (R. S. O. cap. 23, sec. 15), and

mean a person *bona fide* occupying property

persons claiming under them by assignment (*Ibid.* sec. 17), or by tax sale (*Ibid.* sec. 18); or without such licenses, as squatters. "The law of occupancy is founded upon the law of nature. So as upon the first coming of the inhabitants to a new country, he that first enters upon such part of it and manures it, gains the property; so that it is the actual possession and manurance of the land which was the first cause of occupancy:" *Vin. Abr.* "Occupant" H. Occupancy is only to supply a freehold: *Smartle v. Penhallow*, 1 Salk. 189. So when a nation finds a country uninhabited, and without an owner, it may lawfully take possession of it; and after it has sufficiently made known its will in this respect, it cannot be deprived of it by another nation: *Vattel's Law of Nations* 99. The possession of immoveable property, when it has originated in and been continued under such circumstances and for such length of time as the law has prescribed, may constitute a valid and indefeasible title: 3 *Burge's Col. & For. Law* 7. A squatter who is in possession for his own benefit, and not as a servant to any person, has a title sufficient to support his vote: *Brough on Elections*, 12. An intruder upon Crown lands gains no estate or interest by his possession; and the Crown may grant the land as freely as if no such intruder were upon it, and the grantee of the Crown would, by force of his grant, be seised of an estate in possession in the eye of the law: *Doe Fitzgerald v. Finn*, 1 U. C. Q. B. 70. This law has been held to prevail where the occupants have been mere squatters, or where a party has gone into possession with a fair ground for expecting that his title would be confirmed: *Ibid.* 80. The actual possession of Crown lands entitles the party in possession to maintain trespass against a wrong-doer: *Harper v. Charlesworth*, 6 D. & R. 572. But to maintain trespass, the possession must be actual and continuous: *Henderson v. McLean*, 8 U. C. C. P. 42. A squatter in occupation of Crown lands by suffrance, but whose claim has not been recognized by the Crown, has no estate or interest in

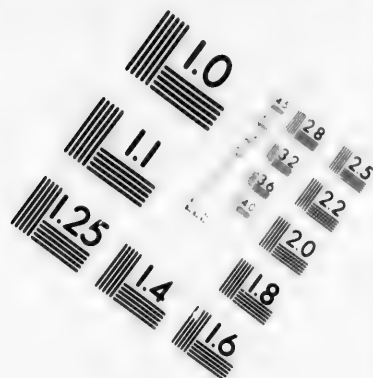
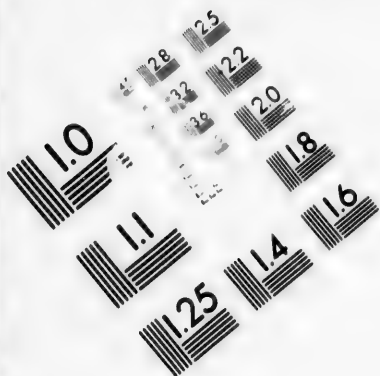
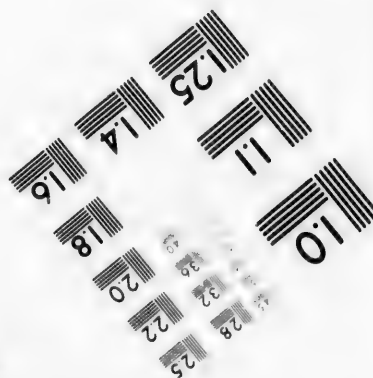
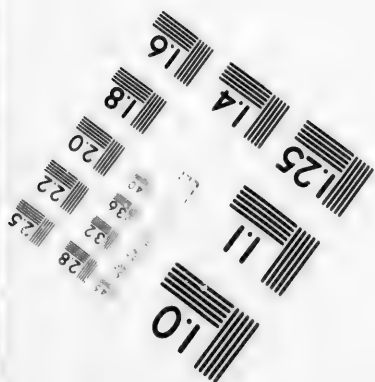
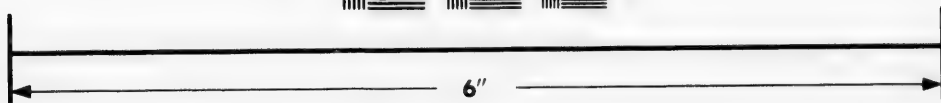
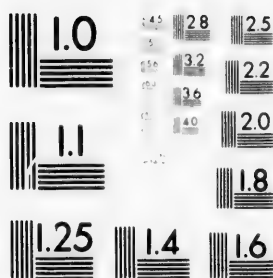
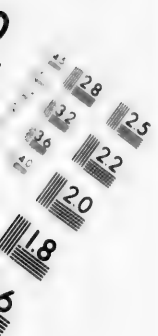


IMAGE EVALUATION TEST TARGET (MT-3)



**Photographic
Sciences
Corporation**

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503



otherwise than as owner or tenant (j), either in his own right or in the right of his wife (k), but

the lands occupied by him which would warrant the interference of the Court in partitioning such lands: *Jenkins v. Martin*, 21 Gr. 613. A person having the mere possession of land vested in the Crown for the benefit of the Indians determinable by the Crown at any moment, has no such interest in the land as would enable him to qualify either as proprietor or tenant for election to municipal office: *Reg. ex rel. Lockford v. The City*, 6 Pr. R. 12. He has no estate in such lands, but a possession determinable in an hour: *Ibid.* Persons jointly occupying the land with the owner, and having an agreement for a share in the crops, and who are in a position to compel the owner to carry out such agreement, may vote: *Stormont*, H. E. C. 21. They must have such interest in the land at the date of the last final revision of the Assessment Roll: *Ibid.*; *Re McCulloch and the Judge of Leeds and Grenville*, 35 U. C. Q. B. 449; or if such interest is parted with after such final revision, the voter must be a resident of the constituency at the time of the election: *South Grenville*, H. E. C. 163.

(j) "Otherwise than as owner or tenant." See the definitions of these terms.

(k) "In the right of his wife." In construing the above clause, and the clause defining "owner" the separate object and history of those clauses, and of the Married Women's Property Acts must be borne in mind. None of the Imperial Acts use the expression "proprietor in the right of his wife." Its first appearance in Canadian Legislation is in relation to the Lower Canada Franchise: 22 Vic. cap. 82, sec. 23, C. S. C. cap. 6, sec. 5, sub-sec. 3. The Married Women's Property Act (C. S. U. C. cap. 73), passed in 1859, while it made the wife's real property separate estate *sub modo*, also recognized the husband's estate and interest therein during the coverture: *Royal Canadian Bank v. Mitchell*, 14 Gr. 412. The Election Law of 1868, passed after this judicial inter-

pretation of the Married Women's Property Act (cap. 73), imported into the Ontario Franchise, the Lower Canada expression, that "Owner" should signify "Proprietor in the right of his wife of an estate for life or any greater estate;" this enactment was in 1871, held to give the right to vote to a husband whose wife had an estate for life or a greater estate in land; and that when in possession of that estate he was "proprietor in the right of his wife:" *Prescott*, H. E. C. 1. In 1872 the Married Women's Property Act, 35 Vic. cap. 16, was passed, by which the husband was divested of all estate and interest in his wife's real estate: *Merrick v. Sherwood*, 22 C. P. 477. In 1877 the Legislature re-enacted the two Acts above referred to, R. S. O. cap. 10, and cap. 125, without altering their phraseology, or adopting either of the judicial constructions separately put upon them. And in 1884 (by 47 Vic. cap. 19), and 1885 (by 48 Vic. cap. 2) the Legislature again re-affirmed both statutes in the same words. The rule of construction where the Legislature uses in Acts the same language which was used in former Acts referring to the same subject, and passed with the same purpose, and for the same object, and upon which there have been well-known decisions, is that it uses that language in the sense given by such well-known decisions: *Greaves v. Tofield*, 14 Ch. D. 563. And so where such construction is from long practice or judicial interpretation: *Davidson v. Ross*, 24 Gr. 22. The Married Women's Property Acts repealed so much of the common law as vested in the husband on his marriage, a freehold estate in his wife's land. The phraseology of the Franchise Act,—but for the construction which must be put upon the words which indicate the possession of a beneficial interest or estate in lands as "owner" or "occupant,"—might lead to the conclusion that it was intended to give to a husband the statutory franchise on which he could vote, based upon his marital relationship to the owner. Or that he should have the right to vote as representative of his wife, as has been apparently conceded to him in the Quebec Election Act, 38 Vic. cap. 7 (Q.), by the words that owner shall mean a person "whose wife possesses real estate," and in the amended Dominion Fran-

being in possession of such property (l) and

chise Act of 1886, 49 Vic. cap. 3, in the words that "owner," shall mean "the person whose wife is proprietor of freehold estate." Apparently the effect of such legislation is to give legislative sanction to a new principle of Parliamentary Law, —namely, that the representative of an owner of real property may vote at elections, for or as the delegate of such owner. In support of this view it may be contended that the wife having the ownership of the property becomes entitled to that which is incident thereto, viz., the right to the franchise; and that the husband, though possessing no estate or interest in her property, exercises, by virtue of his marital relationship, such political right as her agent, and marks the ballot for her. The legislation referred to, may be thus said to recognize this principle of representation, or "voting by proxy," at elections; and it apparently sanctions in respect to married women, what appears to have been the ancient practice of unmarried women, of voting by attorney at Parliamentary Elections: "Whether women have not anciently voted for members of Parliament, either by themselves or attorney, is a great doubt. I do not know upon inquiry, but it might be found that they have:" *Per Lee, C.J., in Olive v. Ingram*, 7 Mod. 269. But as the legislature has abandoned the old statutory rules respecting property qualifications, and has given a statutory franchise to persons who have no estate or interest in the qualifying property, but only a relationship to the owner, that of father and son,—as in the case of "Farmers' Sons," and "Landholders' Sons,"—it may now go further and give a further right to vote, based upon another and a higher relationship, that of husband and wife. See further note (f) p. 146.

(l) "Being in possession of such property." By the common law possession was *prima facie* evidence of a seisin in fee. There is no foundation in nature, or in natural law why a set of words upon parchment or paper, should convey the dominion over land, or give one the right to exclude others from a certain spot of territory. Possession is defined

to be the detention by a person of some incorporeal thing with the intention of holding it for himself as owner: 3 *Burge's Col. & For. Law* 3. It is not necessary that there should be a corporeal taking of each part of the particular subject. Thus possession of a part of a farm with the intention of taking possession of the whole, is considered as possession of the whole. Possession is acquired *animo et corpore*, and is not lost *nisi animo et corpore*: *Ibid* 5. The terms "*bona fide* occupying," "possession," "resident," "domiciled," imply an actual possession in fact, and not a mere right of possession. Neither a *right* of possession, nor a *right* to occupy, necessarily implies the exercise of the right in fact. "Actual possession," being therefore a well-known legal phrase or expression, the Legislature cannot be taken to have used it in any other than in such well-known sense; and it is contradistinguished from such possession in law or right as the bare delivery of the deed of grant would confer:" *Per* Tindal, C J., in *Murray v. Thorniley*, 2 C. B. 217; s. c. 10 Jur. 270. If the conveyance be at common law, as A. to the use of A., the grantee has not possession until he has actually received part of the rent: *Ibid*. But if it operate by the Statute of Uses (27 Hen. VIII. c. 10), as to A. to the use of B., the person to whose use it is granted has possession as soon as the grant is executed: *Heelis v. Blaine* 18 C. B. N. S. 90. "If the question came before me for the first time, I should have inclined to hold that 'actual possession' meant something which was capable of demonstration, and not a mere parchment title:" *Per* Grove, J., in *Hadfield's Case*, L. R. 8 C. P. 319. "I think that the epithet 'actual occupation' is to be applied to the *fact* of residence or occupation, and not to the *character* or nature of the occupation; the voter must be actually in occupation, but his occupation need not be a personal occupation of every room in the house:" *Per* Crampton, J., in *Duiganan's Case*, Alc. Reg. Ca. 116. It is difficult to say what the meaning of the words "actual possession," as contradistinguished from "possession," is, since there can be but two modes of possessing property, viz., by actual possession, or by receipt of the rents and profits: 1 *Stephens on Elections* 461. In

enjoying the revenues and profits arising therefrom to his own use (m).

legal understanding a person in actual receipt of rents is said to be in possession: *Ibid.* 464. One who lets the eatage of his grass does not cease to occupy as a tenant: *O'Shea v. Meara*, 1 Ir. R. (R. App.) 1. See further, *Heyden v. Tiverton*, 4 C. B. 1; s. c. 10 Jur. 950; *Orme's Case*, L. R. 8 C. P. 281. A person who occupied a lot of land, cut hay on twenty acres of an adjoining lot, and stored it in a barn thereon: *Held*, not such an occupancy of the twenty acres as exempted such twenty acres from being assessed as non-resident land: *Bank of Toronto v. Fanning*, 17 Gr. 514. "The occupancy contemplated by the statute [now R. S. O. c. 180] is a visible occupancy:" *Per Spragge, C. Ibid.* The fact of occupation is an essential ingredient in the franchise, and must be substantially proved: *Rogers on Elections* ¶9. "There is a material distinction between a holding and an occupation. A person may hold, though he does not occupy:" *Per Littledale, J., Rex v. Ditchet*, 2 B. & C. 183. A man shall be said to be *bona fide* possessed where the person possessing is said to be ignorant of all the facts and circumstances relating to his adversary's title: *Dormer v. Fortescue*, 2 Atk. 124. A possessor is in good faith when he possesses in virtue of a title, the defects of which, as well as the happening of the resolatory cause which puts an end to it, are unknown to him; such good faith ceases only from the moment that these defects, or the resolatory cause, are made known to him by proceedings at law. See *Stuart v. Baldwin*, 41 U. C. Q. B. 446.

(m) "Enjoying the revenues and profits arising therefrom to his own use." The occupancy must be to the use and benefit of the party claiming the right to vote: *Brockville*, H. E. C. 129. *Persons occupying land jointly with the owner*, and having an agreement with such owner for a share of the crops may vote as "occupant." But such persons must be in the position to compel such owner to carry out

nts is
eatage
hea v.
verton,
P. 281.
twenty
ereon :
mpted
land :
upany
] is a
act of
e, and
ms 93.
nc an
npy :"
A man
person
rcum-
tescue,
esses
as the
l to it,
m the
e, are
uart v.

efrom
e and
kville,
th the
share
ersons
ry out

the agreement: *Stormont*, H. E. C. 21. And such agreement must be in force at the date of the final revision of the Assessment Roll: *Re McCulloch and the Judge of Leeds & Grenville*, 35 Q. B. 452. Where it is proved that an agreement exists (verbal or otherwise), that the son should have one-third or one-half of the crops as his own, and such agreement is *bona fide* acted on, the son is entitled to vote: *Brockville (Caldwell's Case)* H. E. C. 129. So where the owner has for some years given up the whole management of the farm to his son, retaining his right to be supported from the product of the place, the son dealing with the crops as his own, and disposing of them to his own use: *Ibid*. A clearly established course of dealing for years as to the management and disposition of crops, and acts done by the son in the management of the farm: *Held*, sufficient to establish an interest in the crops in the son, though the evidence of any original agreement or bargain be not clear: *Ibid*. If the evidence would warrant the jury in finding the crops to be the property of the voter, the son is rightly placed on the roll: *Ibid*. 7 Can. L. J. 221. But where such crops could not be seized for such voter's debt he would not be entitled to vote: *Ibid*. (*Francis's Case*), H. E. C. 129. In a milling business, where the agreement between the father and the son was that if the son would take charge of the mill and manage the business he should have a share of the profits, and the son in fact solely managed the business, keeping possession of the mill, and applying a portion of the proceeds to his own use: *Held*, that the son had such an interest in the business, and, while the business lasted, such an interest in the land, as entitled him to be on the roll: *Stormont (Bullock's Case)*, H. E. C. 21. So, where the voter had been originally put upon the Assessment Roll merely to give him a vote, but by a subsequent arrangement with his father, made five or six years before the election, he agreed to support his father and apply the rest of the proceeds to his own support, it was held that if he had been put on originally for the purpose of giving a vote, and that was the vote now questioned, it would have been bad; but having been continued for several years after he really became the occupant for his own bene-

fit, he was entitled to be on the roll: *Ibid.* (*Gore's Case*). But the rule is different where father and son live together on the father's farm, and the father is in fact the principal, to whom the money is paid and who distributes it, and the son has no agreement binding on the father to compel him to give the son a share of the proceeds of the farm, or to cultivate a share of the land, and the son merely receives what the father's sense of justice dictates: *Ibid.* (*Eamon's Case*). Or where a certain occupancy was proved on the part of the son, distinct from that of the father, but no agreement to entitle the son to a share of the profits, and the son merely worked with the rest of the family for their common benefit: *Ibid.* (*Raney's Case*). Where the owner died intestate, and the estate descended to several children, only the interest of the actual occupants is generally to be considered: *Brockville (Lealie's Case)*, H. E. C. 129. Where the occupant is shown to be receiving the rents and profits, on account of a party interested, though not in actual possession, a mere liability to account is not to be considered: *Ibid.* 7 Can. L. J. 221. The widow of an intestate owner continuing to live on the property with her children, who own the estate and work and manage it, should not, till her dower be assigned, be assessed; nor should any interest of hers be deducted from the whole assessed value, she not having the management of the estate: *Ibid.* (*Gilroy's Case*), H. E. C. 129. Where a husband had possession of property for which he was assessed as "occupant," and his wife as "owner," but the property belonged to his wife's daughters by a former husband, his vote was held good: *Ibid.* (*Whaley's Case*). Where, under an agreement between father and son, the son was to share in the crops, but it was in the father's discretion to determine the son's share, such son was not entitled to vote: *Ibid.* (*Johnson's Case*). Where father and son were in the occupation of property, the son as owner, and the father under an agreement "to have his living off the place," the father was not entitled to vote: *Ibid.* (*Wiltse's Case*). A person residing and working on his father's farm under the promise of a deed of part of the farm, should be entered as a "Farmer's Son:" *Per Moss, C. J. A., Opinions on Voters'*

Lists Act, Case 8 (Appendix). Where a vendor had conveyed and given possession of the property to a purchaser, and such purchaser afterwards, and before the final revision of the Assessment Roll, gave the vendor a license to occupy a small portion of the property, such vendor was not entitled to vote: *South Grenville (Noblin's Case)*, H. E. C. 163. A verbal agreement with an Indian to work the farm of such Indian, which was Indian lands, on shares, under which the defendant went into occupation, and had sown several acres with fall wheat; *Held*, that such agreement was illegal, and that the defendant was properly found guilty of misdemeanor under the Indian Act: *Reg. v. Hagar*, 7 U. C. C. P. 380. The occupancy defined by this clause excludes some occupations of less independence, where such occupations depend upon the performance of duties as a servant, such as the porter to a lodge, or the gardener occupying a dwelling in the garden: *Davis on Registration* 17; or keeper of a town hall: *Clark v. St. Mary, Bury St. Edmunds*, 1 C. B. N. S. 23. Or such an occupation that possession would have to be given up when the employment ceased: *Ferrar's Case*, Alc. Reg. Ca. 248. Where, after a hiring as gardener at a salary and a right to occupy a house, the gardener behaved insolently towards his master: *Held*, that the master could dismiss him without giving notice, and that such gardener's right to occupy the house ceased with the termination of the service: *Fleming v. Hill*, 1 Russ. & Ches. N. S. 268. A clerk in a brewery occupying a house connected with the brewery in the capacity of a clerk, disqualified: *Re Gorman*, 1 Ir. L. R. 282. Likewise a bank officer occupying the bank premises: *Re Gillies*, 3 Cr. & Dix 374. On an appeal against the right of a person to vote as "occupant," the County Judge may amend the notice of appeal, and enter him as "tenant" if so qualified: *Per Patterson, J.A., Opinions on Voters' Lists Act*, Case 6 (Appendix). The words "enjoying the revenues and profits arising therefrom to his own use" are inapplicable to the case of a married man whose wife is the "occupant" and in possession of the real property. Under the recent statutes she would be entitled to hold such property as separate estate, and to receive to her own use

Tenant.

3. The word "tenant" (n) shall include any

the revenues and profits to the exclusion of her husband. And she would also be entitled to an injunction against her husband interfering with her proprietary rights therein : *Donnelly v. Donnelly*, 9 Ont. R. 673. See further note (k) p. 162, and the notes on "occupant," *post*.

(n) In the language of the law, every possessor of landed property is a tenant, with reference to such property, and this whether the property is held and owned by him as "tenant in fee;" or as an entailed estate is held by him as "tenant in tail;" or is held for his own, or another's life, as "tenant for life;" or is held under a lease for a term of years, as "tenant for years," or is held subject to the will of another as "tenant at will." But in this Act the term is used in the popular sense of one holding the land of another, who is termed his landlord; and for the use of which land the tenant pays rent in money or produce. The relation of landlord may be created by assignment or lease. Where the alienor conveys the whole estate to an alienee, leaving no reversion to himself, the conveyance amounts to an assignment. When he grants only a portion of an estate, reserving to himself a reversion, the conveyance is a lease. Where a lessee for years demises part of his property to another for the whole of his term, the demise is called an assignment *pro tanto*. Where he disposes of his term, reserving a reversion of even one day, the transfer is, with reference to the original lease, an underlease: *Crusoe doe dem Blencowe v. Bugby*, 2 W. Bl. 766. A tenant under a lease from year to year cannot create a sub-tenancy, nor a right to vote in the sub-tenant, by giving another person a share in the crops grown on the leased property: *Brockville (Dunham's Case)*, H. E. C. 129. Where a party entered into possession of a lot which had no house or building, and sowed a crop there, upon a verbal understanding that he was to have the product, but no special time was mentioned; *Held*, that a sufficient tenancy was created: *Mulhern*

v. *Fortune*, 8 U. C. C. P. 434. Where the voter and his son leased certain property, and the lease was drawn in the son's name alone, and when the crops were reaped the son claimed they belonged to him solely, the voter owning other property, but being assessed for this only; *Held*, not entitled to vote: *Stormont (Hill's Case)*, H. E. C. 21. Where the voter was the tenant of certain property belonging to his father-in-law, and before the expiration of his tenancy the father-in-law, with the consent of the voter leased the property to another, (the latter being a witness to the lease) the voter's lease not expiring until November, and the new lease being made the March previous; *Held*, that after the surrender of the lease, to which he was a subscribing witness, he ceased to be a tenant, and that to entitle him to vote he must have the qualification at the time of the final revision of the Assessment Roll, though not necessarily at the time he voted, so long as he was still a resident of the electoral division: *Ibid. (Rupert's Case)*. Where a voter, after becoming insolvent, continued in the undisturbed occupation of the premises of which he was a tenant; *Held*, he was entitled to vote: *Dublin (Hyland's Case)*, Fal. & Fitz. 158. Children of a deceased tenant from year to year, who remain in possession, are co-parceners or tenants in common, and the tenancy continues to them until a paramount title intervenes: *McIntyre v. McIntyre*, 1 P. E. I. 500. A., the former tenant of a house, died intestate, leaving a widow and infant children in possession. No administration was taken out to his estate. B. married the widow, and went into possession of the house, paid all rents and taxes, and maintained the children of the intestate; *Held*, that B. was entitled to vote: *McLaughlin's Case*, Alc. Reg. Ca. 249. The occupant of a separate portion of a house, such portion having a distinct communication with a public road or street by an outer door, is a householder within the meaning of the Municipal Act, 46 Vic. cap. 18, sec. 87. Where a house is let out in separate portions to different tenants, and the owner or landlord does or does not reside on the premises, though there is but one outer door common to all tenants, each distinct portion so let is the house of such occupier,

and each tenant is entitled to be rated, and to be registered as a voter: *Reg. ex rel. Forward v. Bartels, (Long's Case)* 7 U. C. C. P. 539; *Score v. Huggett*, 7 M. & Gr. 95; *Rex v. Unsworth*, 5 A. & E. 201; *Toms v. Lockett*, 5 C. B. 23. Where rooms in a factory, in which each tenant had his own spinning machine, worked by a steam engine belonging to and worked by the landlord, but each tenant had the exclusive use of his own room and kept the key of the door, which he approached by a common staircase; *Held*, that each tenant was entitled to vote: *Wright v. Stockport*, 5 M. & Gr. 33. The occupier of an upper floor in a building having an outer door on the landing communicating with the staircase, and having with the tenants of the other floors a common right to the doorway which was not fastened, was held to occupy rooms structurally severed from the rest of the building, and therefore qualified to vote: *Henrette v. Booth*, 15 C. B. N. S. 500. Flats are as much separate dwellings as ordinary adjoining houses. The difference is that flats are divided one from another by a horizontal plane, but ordinary adjoining houses by a vertical plane: *Per Byles, J., Stamper v. Sunderland*, L. R. 3 C. P. 400. The only difficulty is the fact of their being built with an inside staircase. Supposing they had been built as Swiss houses are built, with staircases outside, you would have gone up the outside staircase to the level of your own landing, and have opened the door of your house built as a separate house: *Per Brett, L.J., in Bradley v. Baylis*, 8 Q. B. D. 232. A lodger is a tenant within the meaning of the Reform Act (Imp.) if the premises are let to him: *Cook v. Humber*, 11 C. B. N. S. 33. There is no doubt a lodger is a tenant where the house is partially let out, and where it is wholly let out, provided that the lodgers in each case have the right to the exclusive possession of their own rooms: *Per Montague Smith, J., in Stamper v. Sunderland*, L. R. 3 C. P. 406. It is difficult to define the difference between a "tenant" and a "lodger;" but probably it may be said with accuracy that where the landlord himself resides in the house the other inmates are lodgers, because they submit themselves to his control; but where the landlord does not reside in the house, or when he

person who, instead of paying rent in money (o),

occupies a separate set of rooms in the basement, or the house is divided into separate flats; in each of these cases, even though a servant of the landlord may be present, the separate occupation exists which is necessary to constitute a tenancy: *Per Hannen, J., Anketell v. Baylis*, 10 Q. B. D. 586. Unless the owner has the general control and superintendence of the house, the person who occupies a portion of such house under him is not a lodger: *Scott v. Metcalf*, 10 Ir. C. L. L. 55. The occupiers of chambers in college, or in the Inns of Court, are entitled to vote: *Evans & Fynche's Case*, Cro. Car. 473; *Middlesex (Anstey's Case)*, 2 Peck. 109. But where the rooms occupied were not structurally severed, as where the separate rooms of a set of chambers were rented to separate tenants, each of whose rooms communicated with a vestibule which had an outer door leading to the landing on a public staircase; *Held*, that the occupants of the separate rooms had no right to vote: *Cuthbertson v. Butterworth*, L. R. 4 C. P. 523. But the tenant of the set of chambers does not lose his vote by subletting some of the rooms to sub-tenants: *Smith v. Lancaster*, L. R. 5 C. P. 246. A person occupied exclusively the whole of the second floor in a house, and the landlord lived in the house and occupied the shop. The outer or street door was kept closed, but both inmate and landlord had keys thereto; *Held*, that such inmate was not a joint occupier, nor entitled to vote: *Wansey v. Perkins*, 7 M. & Gr. 155. Where a voter is improperly assessed as "tenant," instead of "owner," his right to vote is not affected by such mistake: *Stormont (Blain's Case)*, H. E. C. 21.

(o) "The word 'rent' may be held to mean what the landlord gets for rent under the usual conditions, though technically this is not its meaning; and if the landlord is not obliged to pay the rates, all that he gets as rent, and all that ought to be taxed as rent, is the whole payment after deducting what he is obliged to pay:" *Per Cleasby, B., in Sheffield*

is bound to render to the owner any portion of the produce of such property (p).

v. *Bennett*, L. R. 7 Ex. 421. The annual value, or real rent, of the premises is the sum which the tenant pays for the right to occupy the premises in a normal state, with nothing but what may be called their freehold advantages: *Per Bramwell, B., Ibid.* 413. In popular language, and for many purposes in legal presumption, a man is said to be in possession of property which is occupied by tenants who pay him rent for it: *Rogers on Elections* 81. But the receipt of rents and profits by one who is a stranger to the estate will give no right to vote: *Gloucester*, 1 *Stephens on Elections* 457. Nor would a person be entitled to vote for land he does not own, though he be assessed for it and receives rents from a tenant: *Lincoln* (2) (*Clark's Case*), H. E. C. 500. And such payment of rent to a stranger will not deprive the real owner of his right to vote: *Bedfordshire (Trotman's Case)*, 2 *Lud.* 431. "Rent," under R. S. O. c. 136, "shall, like interest on money lent, be considered as accruing due from day to day, and shall be apportionable in respect of time accordingly."

(p) Under an agreement by which A leased a farm to B, on condition of B delivering to him one-half of the wheat raised on it: *Held*, that A and B were not partners, but stood in the relation of landlord and tenant: *Haydon v. Crawford*, 3 U. C. O. S. 583. Where A put B into possession of 100 acres of land, and B covenanted to pay A a bushel of wheat for every acre cleared after he had been in possession three years: *Held*, that A might sue B for the value of the wheat as rent after such three years: *McNab v. McFarlane*, *Ibid.* 287. Where the owner of a farm agreed with B to work it on shares, and both parties were equally in possession of the whole farm: *Held*, that there was no demise creating the relation of landlord and tenant, and that the parties were occupants of the farm in common: *Oberlin v. McGregor*, 26 U. C. C. P. 460. P, owning land, agreed with M & B that he would furnish a team of horses, and farming

4. The expression "landholder" (q) shall mean Landholder.
and include :

implements and seed for a certain lot; they agreed to do the work in a proper manner and in the proper season, as P should direct, harvest the grain, pay for their share of threshing, and keep up fences, etc. M & B for the first year had one-third, and in the second year one-half of the crops: *Held*, not a letting of the land on shares, or giving to M & B a term of possession, but a contract for remuneration for their care and labor in growing the crops as P should direct: *Park v. Humphrey*, 14 U. C. C. P. 209. A permitted B to occupy certain lands, on which, in lieu of rent, B was to make improvements, but which were not defined: *Held*, that by the successive improvements, such as they were, the relation of landlord and tenant was created, although the improvements were not strictly in lieu of "rent:" *Workman v. Robb*, 28 Gr. 243; 7 App. R. 389. Money's worth includes services rendered in some capacity connected with the premises, as where the occupation of premises is given in part remuneration for a duty or service rendered: *Hughes v. Chatham*, 5 M. & Gr. 54. See further the notes to "Tenant," *post*.

(q) This definition is for the purpose of indicating the class of persons whose sons are to be registered under the title of "Landholders' Sons." The former title of this franchise was "Farmers' Sons;" and it was conferred upon so many of the sons resident on the farm of the father, or their mother, after the death of the father, as the assessed value of the farm would qualify according to the ratio of the statutory qualification. The qualifications for this new franchise are (1) As to relationship, that of: (a) father; (b) mother; (c) grandfather; (d) grandmother; (e) step-father; (f) step-mother; (g) father-in-law; or (h) mother-in-law. (2) As to title, (a) *Owner*: of at least twenty acres in extent; or of real property of a specified assessed value; (b) *Tenant* of any dwelling house and land of a specified

Person
domiciled
on real pro-
perty as
owner.

(a) Any person who being the owner (r) of and residing and domiciled upon (s) real property of at least twenty acres in extent, or of at least an actual value in cities and towns of four

assessed value. (3) As to assessed value for *Owner*; (a) twenty acres—no value specified; (b) other real property, in cities and towns, \$400; townships and incorporated villages, \$200; for *Tenant*, cities and towns, \$400; townships and incorporated villages, \$200. (4) As to residence: both owner and tenant and the "Sons" to be resident and domiciled upon such real property. There is no limit to the number of sons to be placed on the Voters' List, if the above qualifications are possessed by those holding towards such sons the parental relationship above specified. Sons of "Occupants" are not included in this franchise. See further the note on "Landholders' Sons," *post*.

(r) See notes on "Owner," pp. 143-160.

(s) "Residing and domiciled upon real property." Residence is where one habitually sleeps. *Prima facie* a man's home is where his wife lives: *Reg. v. Norwood*, L. R. 2 Q. B. 457. It is where a man establishes his abode and makes the seat of his property: *Chase v. Miller*, 41 Penn. St. 403; with a fixed purpose of remaining, and which cannot be referred to an occasional purpose either of pleasure or business: *Bampde v. Johnston*, 3 Ves. 201. "An inhabitant of any place is one who makes it his place of abode, his dwelling place; he must *reside* there, and, to qualify him as a voter, the residence must have been continuous for the twelve months preceding. Any breach of residence, even for a single day, will disqualify. What is a breach of residence? The *animus revertendi* then presents itself for consideration, as also do questions of absence in prison, of persons abroad on military service, and other conditions which will frequently present themselves as affecting claims and objections:" *Cox & Grady on Elections* xvi. The cases governing the fact of

hundred dollars, and in townships and incorporated villages of two hundred dollars, is, in the last revised Assessment Roll of the municipality

"actual residence" would seem to be applicable to some extent to the cases of "actual occupation," subject to the following limitations: A "residence" may be maintained for the statutory period by an occupation of any number of different premises within the same municipal or electoral division, by the voter himself. An "occupation" must be an actual and continuous occupation of the same premises within such division for the statutory period by the voter or his family. A permanent unbroken dwelling in a particular place is not required to constitute *residence*; absence, if there be a power of returning, and an intention to return, will not prevent a constructive legal residence. But a person who has relinquished the dominion over his house for any period, however short, or has abandoned the intention to return to it, even though he does subsequently return to it, cannot be said to have a constructive *occupation*. See *Rex v. Sergeant*, 5 T. R. 466; *Rex v. Duke of Richmond*, 6 T. R. 560; *Regina v. Brighthelmstone*, 1 Q. B. 674. Where a voter had a house in the borough where his wife and daughter always lived, but, being a plate-layer on a railway, he only occasionally came and slept at home, his residence was held sufficient, because his wife resided in the borough: *Northallerton (Bilton's Case)*, 1 O'M. & H. 171. A, being employed as attendant upon a gentleman, who required constant attendance in the day time, occupied premises with the gentleman, where he usually slept, but was not bound to do so. He had also lodgings at C, where his wife and children resided, and where he could sleep at any time, and where he slept at least once a week: *Held*, entitled to vote at C: *Taylor v. St. Mary Abbott*, L. R. 6 C. P. 309. Where the voter's wife and children lived at his house at M, he himself following the occupation of an omnibus conductor in London, and only having slept at M at intervals during three years: *Held*, vote good: *Great Marlow (Clark's Case)*,

where such property is situate, entered and assessed as owner of said property of at least the number of acres or the assessed value aforesaid, and

Bar. & Aus. 83. And so held where the voter removed temporarily to London, for the purpose of passing through the Insolvent Court, his wife remaining behind: *Cambridge (Lyon's Case)*, Wol. & Br. 46. If a man dwelleth in a shire, riding, city or town, and keepeth a house and servants in another shire, riding, city or town, he is an inhabitant in each: 2 *Co. Inst.* 702. A voter had two residences, one at some distance from N, where he generally resided, and another at N, which he always kept up, but where he stayed only sixteen times during the year. He kept two servants there, and often allowed persons to stay there as guests: *Held*, qualified in N: (*Marshall's Case*) 1 O'M. & H. 171. A man who has two houses, and lives at each when he pleases, would reside at both houses within the meaning of the Act: *Per* Bovill, C.J., L. R. 6 C. P. 309. A rented premises in London as sole tenant for the requisite twelve months. He had also a house at D, where he kept an establishment of servants all the year round; but when in London he occupied the rented premises, and had done so at intervals for two months out of the twelve: *Held*, a sufficient residence in London to qualify: *Bond v. St. George*, *Ibid.* 312. He had no wife or family, or servants residing there in his absence, but still he was sole tenant, with a power to go there when he pleased, which he exercised from time to time: *Per* Bovill, C.J., *ibid.* The claimant who resided and carried on business elsewhere, in order to obtain a vote in T paid a friend 9d. a week for a bed-room and a closet, of which he kept the key. During the six months he slept there twelve times. The arrangement was made to qualify the claimant: *Held*, not a *bona fide* residence: *Whithorn v. Thomas*, 7 M. & Gr. 1. "Residence" must mean an actual occupation, by the party being there some time by himself or his family. There must be an *animus residendi*: *Per* Tindal, C.J., *Ibid.* The voter at

(b) Any person actually residing and domiciled ^{Person domiciled as tenant.} in any dwelling house (t) as tenant thereof (u), where such dwelling house and the land, if any, held therewith by such person as such tenant is of at least an actual value in cities and towns of four hundred dollars, and in townships and incorporated villages of two hundred dollars (v),

the time of registration occupied a house, from which he removed to another part of the borough, leaving, however some furniture and other goods in it, sleeping there occasionally and continuing to be rated and to pay rent for it. His son and daughter, who had previously lived with him continued to reside there, the son using the house as his residence for his professional business: *Held*, the voter did not occupy the house as required by the statute: *Wigan (Nathan's Case)*, Bar. & Aus. 152. Where a voter had been sold out and obliged to leave his house, from which he removed to an inn in the borough: *Held*, disqualified: *Bewdley (Evans Case)*, 1 O'M. & H. 174. A voter who kept a public house in the town, where he kept a bed and slept there occasionally, but he had a house in the country where he usually slept: *Held*, that, as a man's residence was where he habitually slept, the voter was not qualified to vote in the town: *Oldham (Baxter's Case)*, 1 O'M. & H. 158. Occasional residence in a borough is not sufficient. The voter, his wife and family resided at D. He kept a shop and bed-room at B, where he slept occasionally: *Held*, not a voter in B: *Bewdley (Edmonds' Case)*, 1 O'M. & H. 175. See further notes on "Residence," *post*.

(t) See the definition of "Dwelling-house," *post*.

(u) See notes on "Tenant."

(v) It is not easy to comprehend why different ratios of value for cities, towns, villages, and townships should have been adopted as the gauge of the political intelligence of the voters in the named classes of localities. The distinction was

and is at not less than such value entered and assessed in the name of such person in the last revised Assessment Roll of the municipality wherein the same is situate.

Landholder's son.

5. The expression "landholder's son" shall mean and include a son, step-son, grandson, or son-in-law, as the case may be, of any landholder.

Wage-earner.

6. [*As amended by 49 Vic. cap. 3, sec. 1.*] The expression "wage-earner" shall mean any person entitled to be entered in the last revised Assessment Roll of a city, town, incorporated village or township, as being a wage-earner within the meaning of *The Assessment Act*, or of any Act amending the same (w).

first made by the Constitutional Act of 1791, and has been incorporated into the legislation of this Province ever since. The Assessment Act, R. S. O. cap. 180, directs that "Real and personal property shall be estimated at their actual cash value, as they would be appraised in payment of a just debt from a solvent debtor:" sec. 23. "True actual value:" sec. 192. And this direction applies to all localities and to all Assessors. It has not been explained why the above distinction was originally made, or why it has been continued in the Franchise Acts, in view of the uniform provisions in the Assessment Acts which are equally binding upon all classes of Assessors. Real property in cities and towns must be assessed, and, for the purpose of the right to vote under this Act, should be valued, at the same rates of value as real property in townships and villages. The effect of this distinction in values may be practically illustrated by observing its effect on the two sides of the roads, streets, or other lines dividing the above defined municipalities from each other.

(w) By the *Assessment Amendment Act*, 1885, "wage-earner" shall mean any male person of the full age of 21

7. The expression "dwelling-house" shall mean and include any part of a house when that part is separately occupied and resided in as a dwelling (x), and also any land where such land

years, and a subject of Her Majesty by birth or naturalization who is actually residing and domiciled in any local municipality, and who is not otherwise entered or assessed on the Assessment Roll of said municipality in respect either of property or taxable income, so as to entitle him to vote at an election for a member of the Legislative Assembly of this Province."

(x) A similar definition is contained in the Act 41 & 42 Vic. cap. 26 (Imp.): "The term dwelling-house shall include any part of a dwelling-house when that part is separately occupied as a dwelling." Before this definition, it was held that rooms in a house structurally severed from the rest, constituted a dwelling-house: *Boon v. Howard*, L. R. 9 C. P. 277. But structural severance is no longer necessary under the above definition: *Lely & Foulkes on Elections* 55. A man inhabits a dwelling-house by inhabiting a part, however small, as a house of his own; whereas he inhabits lodgings by inhabiting a part, however large, of a house subject to the control of a resident landlord: *Ibid.* 37. In criminal cases the term "dwelling-house" is held to include every permanent building in which the renter or owner and his family dwell and lie; and burglary may be committed in it. Even a set of chambers in an inn of Court or a college, is deemed a distinct dwelling-house for this purpose: *Archibold's Crim. Pr.* 518; or a room over a brewhouse where the prosecutor's boy slept: *Ibid.* But if a porter lie in a warehouse for the purpose of protecting goods (*Rex v. Smith*, 2 East P. C. 497); or a servant lie in a barn in order to watch thieves (*Rex v. Brown*, 2 East P. C. 501), this does not make the warehouse or barn a dwelling-house: *Ibid.* 519. "If inmates have several rooms in a house, of which rooms they keep the keys, and inhabit them severally with their families, yet if

is separately occupied or resided upon as and is part of the premises belonging to and used with such dwelling (y).

Householder.

8. The expression "householder" shall mean any person entered in the revised Assessment Roll of a city, town, township or incorporated village, as sole tenant or occupant of and actually resident in a dwelling-house situate therein (z); but shall not mean nor include,

they enter into the house at one outer door with the owner, these rooms cannot be said to be the dwelling-house of the inmates:" *Per Holt, C.J., Rogers on Elections* (5th ed.) 152.

(y) This may include a separate occupation from the dwelling-house; or it may mean a separate occupation of a part of a dwelling-house, and of a part of the land, when such land is "part of the premises belonging to and used with such dwelling." It is not required that both properties should be held under the same landlord. See notes (s) p. 176. and (x) p. 181.

(z) "The common law right of voting in boroughs was held to belong to 'inhabitant householders':" *Rogers on Elections* 52. Inhabitant householders are persons residing in and occupying a tenement: *Ibid.* 116. "No person can be deemed a householder who does not possess an exclusive right to the use of the outer door, although by taking inmates he may have relinquished for a time the exercise of that exclusive right; neither can a person whose habitation is composed of more than one apartment be deemed a householder, unless he also possesses an exclusive use of the staircase, doorway, or other passage, that forms the means of communication between his several apartments, although by taking inmates he may likewise have relinquished for a time the exercise of that right:" *Cirencester*, 2 Fras. 449.

(a) Any person who is so entered or who is ^{Not a joint occupant.} actually a joint tenant or occupant of such dwelling-house with any other person (a); nor

(b) Any person who is a mere lodger or boarder ^{Nor lodger.} in a house (b).

9. The expression "local municipality" shall ^{Local municipal-} mean and include a city, town, incorporated ^{pality.} village or township, as the case may be.

(a) This may be read as an exception to clause (3) *firstly*, of sec. 7 *post*, allowing joint-tenants and occupants to vote. When a general intention is expressed in a statute, and also a particular intention inconsistent with the general intention, the particular intention is to be considered in the nature of an exception: *Churchill v. Crease*, 5 Bing. 177.

(b) A lodger, though he may have the exclusive possession and occupation of a large portion of a house, has never been considered as the under-tenant or sub-lessee of land or of an entire house; but the landlord has always been looked upon as the householder, or master and occupier of the house: *Rogers on Elections* (5th ed.) 158. When the owner of a house lets out apartments in it to lodgers, but continues to inhabit some part of the house himself, and has but one outer door common to him and his lodgers, such apartments would be considered as parcel of his dwelling-house. It will be a necessary consequence that if he should break open the apartments of his lodgers in the night and steal their goods, the offence would not be burglary, on the ground that a man cannot commit burglary by breaking open his own house: *Kelynge*, 83; 2 East P. C. 506. If a lodger commits a larceny in the house, and in the night time even lifts a latch to get out of the house with the stolen property, this is a burglariously breaking out of the house: *Reg. v. Wheeldon*, 8 C. & P. 747.

Election. 10. The word "election" shall mean an election of a member to serve in the Legislative Assembly.

To vote. 11. The expression "to vote" shall mean to vote at the election of a member of the Legislative Assembly.

Electoral district. 12. The expression "electoral district" shall mean any county or other place or portion of this Province, entitled to return a member to the Legislative Assembly.

Voters' List. 13. The expression "voters' list" shall mean the copy of the Voters' List furnished in accordance with section 56 of this Act.

Last revised Assessment Roll. 14. The expression "last revised Assessment Roll" shall mean the last revised Assessment Roll of a city, town, incorporated village or township (c).

Corrupt practices. 15. The expression "corrupt practices" or "corrupt practice" shall mean bribery, treating and undue influence, or any of such offences as defined by this or any Act of the Legislature, or recognized by the Common Law of the Parliament of England; also any violation of sections 151, 154, or 156 of this Act, and any violation of section 157 of this Act during the hours appointed for polling (d).
(1) Bribery.
(2) Treating.
(3) Undue influence.
(4) Entertaining voters.
(5) Hiring vehicles.
(6) Personation.
(7) Selling liquor during polling hours.

(c) See R. S. O. cap. 9, sec. 2, sub-sec. 11 and note (e) p. 22.

(d) See note (e) p. 103.

3. No qualification in real estate shall be required of any candidate for a seat in the Legislative Assembly (e). No property qualification for M. P. P.

4. [As amended by 48 Vic. cap. 2, sec. 10.] The Chief Justice and the Justices of the Court of Appeal, the Chancellor and Vice-Chancellors of Ontario, the Chief Justices and Judges of the Courts of Queen's Bench and Common Pleas in Ontario, all County Judges, all Officers of the Customs of the Dominion of Canada, all Clerks of the Peace, County Attorneys, Registrars, Sheriffs, Deputy Sheriffs, Deputy Clerks of the Crown, and Agents for the sale of Crown Lands, all Postmasters in Cities and Towns [all Stipendiary Magistrates] and all Officers employed in the collection of any duties payable to Her Majesty in the nature of duties of Excise, shall be disqualified and incompetent to vote at any election (f); and if any public officer or person

Judges and Officers disqualified from voting.

Vic. 48, cap. 2, sec. 10.

(e) Until 9 Anne, cap. 5 (1710) no property qualification was required of members of Parliament. The Acts 1 Henry V. cap. 1, 8 Henry VI. cap. 7 and 23 Henry VI. cap. 14 provided that the members elected for counties, cities and boroughs should be chosen men resident, abiding, and free in the same. The property qualification required of members of Parliament was abolished in England in 1858 (21 and 22 Vic. 26), in Ontario in 1869 (33 Vic. cap. 4, sec. 2), and in Canada in 1874 (37 Vic. cap. 9, sec. 20).

(f) Judges being liable to be summoned as assistants to the House of Lords, and being one of the executive parts of the Constitution are ineligible: *Com. Jour.* 9th Nov. 1605. Postmasters are prohibited from voting at Dominion elections, not by any general election law, but by the general Post Office Act: *Savage v. Deacon*, 22 C. P. 441. But all

Penalty.

mentioned in this section votes at any such election, he shall thereby forfeit the sum of two thousand dollars (*g*), and his vote at such election shall be null and void.

Election officers and persons not to vote.

5. No Returning Officer or Election Clerk, and no person who, at any time, either during the election or before the election, is or has been employed at the said election or in reference thereto, or for the purpose of forwarding the same by any candidate or by any person whomsoever, as counsel, agent, attorney or clerk, at any polling place at any such election, or in any other capacity whatever, and who has received or expects to receive, either before, during or after the said election, from any candidate or from any person whomsoever, for acting in any such capacity as aforesaid, any sum of money, fee, office, place of employment, or any promise, pledge or security whatever therefor, shall be entitled to vote at any election (*h*).

the officers named, if qualified as Municipal electors, may be entered on Part 2 of the Voters' Lists. See notes pp. 11 and 12.

(*g*) See 47 Vic. cap. 4, sec. 38. (O.)

(*h*) Under similar provisions in the Act 7 & 8 Geo. IV. cap. 7 (Imp.) the following were disqualified: A voter employed as a check clerk: *Bedford*, P. & Kn. 136. A solicitor who accepted and acted under a retainer at an election: *New Windsor*, K. & O. 175, s. p. *Bedford*, Falc. & Fitz. 439. An elector who was to be paid for his trouble: *New Windsor*, K. & O. 173. The paid agent of one candidate cannot vote for the other candidate: *Ibid.* 174. A town clerk who read the proclamation and acted as assistant to the Returning Officer: *Ibid.* 185. A parish clerk employed

2. The preceding provision shall not apply to Deputy Returning Officers and Poll Clerks appointed under this Act and receiving as such the fees to which such officers are entitled under this Act.

Not to apply to D. R. O's or Poll Clerks.

by both parties to point out the houses of voters: *Ibid.* 246. Two town servants, paid by the town corporation, who acted as door-keepers at the candidate's committee rooms: *Ipswich, Ibid.* 385. A voter appointed a carrier at a salary, but who employed a deputy: *Evesham, Fa'c. & Fitz.* 527. Voter employed as a messenger, which was his ordinary calling; *Ibid.* The votes of the following were held good: A voter employed and paid to erect the hustings: *Ipswich, K. & O.* 387. Corporation officers employed in keeping the peace during the election, and paid out of the corporation funds: *Ibid.* 394. A voter who led the band and was paid with the other performers: *Monmouth, Ibid.* 421. A voter employed and paid as a messenger: *Huddersfield, Wol. & Br.* 33. The following were held disqualified under the Ballot Act of 1867. (Imp.) Voters whose sons were employed as messengers, their wages having been paid to their fathers: *Southampton, 1 O'M. & H.* 223. A voter remunerated for expenses incurred by him in employing assistants for his own business, while he was engaged in election matters: *Ibid.* 224. Voters employed to keep order at the doors of the polling stations: *Gloucester, 2 O'M. & H.* 62. The votes of the following were held good: Printers who were employed in delivering messages incidental to printing: *Northallerton, 1 O'M. & H.* 170. A voter who was a cabman and whose cab was hired in the ordinary way on polling day, and who was only paid his legal fare: *Southampton, Ibid.* 224. Under section 25 of the Ballot Act (Imp.) 1872, and the above Acts, a voter who was fly-driver, and was employed to convey canvassers about previous to the day of election, was held not to be disqualified: *Down, 3 O'M. & H.* 116. "The disqualifying words are very wide and it would be unsafe for any person employed for reward, in

No woman
to vote.

6. No woman shall be entitled to vote at any election (i).

any capacity whatever, connected with 'all or any purposes of the election' to vote at it. It is to be observed that the disqualification is absolute, and not limited to voting for the candidate by whom the elector is employed:" *Nicolson on Elections* (Scot.) 27 (n.)

(i) A woman not being a "person" within the meaning of the Election Acts, cannot appeal to the Courts from the decision of the Revising Barrister: *Wilson v. Salford*, L. R. 4 C. P. 398. All women having freehold, or no freehold, and men within the age of one and twenty years, are bound by Acts of Parliament, but are not parties to elections: 4 *Coke's Inst.* 5. Women, being under legal incapacity, have no common law right to vote at Parliamentary elections, though possessing the requisite property qualification: *Chorlton v. Lings*, *Ibid.* 374. "Persons disabled from voting at elections are those who, holding freehold lands and tenements, either lie under natural incapacities, and therefore cannot exercise a sound discretion; or are so much under the influence of others that they cannot have a will of their own in the choice of candidates; of the former are women, infants, idiots and lunatics; of the latter, persons receiving alms and Revenue Officers:" *Heywood on Elections* 159. Women are disqualified at common law in Ireland: *Hudson on Elections* 159; and also in Scotland "by a long and uninterrupted custom:" *Brown v. Ingram*, 7 Sess. Ca. (3rd. ser.) 281. In the United States, a female who possessed all the qualifications entitling a person to vote, except that she was not a male, voted at an election for a member of Congress: *Held*, that she was rightly convicted for knowingly voting at such election without having a lawful right to vote: *United States v. Anthony*, 11 Blatch, 200. "I trust the unanimous decision of the Scotch judges and our unanimous decision will for ever exorcise and lay this ghost of a doubt which ought never to have made its appearance:" *Per*

Byles, J., *Chorlton v. Lings*, (*supra*). Before Lord Coke promulgated his opinion "that women having freehold" were not parties to elections, it was said to be the opinion of the judges that a *feme sole*, if she has a freehold, might vote for members of Parliament: *Catharine v. Surrey*, cited 7 Mod. 264. Women, when *sole*, had a power to vote for members of Parliament: *Coates v. Lisle*, 14 Jac. I, cited *Ibid* 265. A *feme sole* freeholder may claim a voice for Parliament-men; but if married, her husband must vote for her: *Holt v. Lyle*, 4 Jac. I, cited *Ibid*. 271. "The case of *Holt v. Lyle* is a very strong case:" *Per Probyn, J.*, in *Olive v. Ingram*, *Ibid*. 267. "Whether women have not anciently voted for members of Parliament, either by themselves or attorney, is a great doubt. I do not know upon enquiry but it might be found that they have:" *Per Lee, C. J.*, *Ibid*. "Women who signed charters in Saxon times may have been present at the Witena Gemot, just as Judges may now be present in the House of Lords in order to advise but not to vote:" *Per Willes, J.*, *Chorlton v. Lings*, L. R. 4 C. P. 374. "Possibly other instances may be found in early times, not only of women having voted, but also of their having assisted in the deliberations of the Legislature:" *Per Bovill, C. J.*, *Ibid*. "But these instances are of comparatively little weight as opposed to the uninterrupted usage to the contrary for centuries; and what has been commonly received, and acquiesced in, as the law, raises a strong presumption of what the law is:" *Ibid*. "Fickleness of judgment, and liability to influence have sometimes been suggested as the ground of exclusion:" *Per Willes, J.*, *Ibid*. Votes given by women at a Parliamentary election in Canada, were not struck off the poll on the mere *prima facie* evidence of the poll book: *Halton* (1844), *Patrick's El. Cas.* 59. Women, not being men at all, may be struck off the poll on a scrutiny of votes: 1 O'M. & H. 159. Though a woman has no common law right to vote at elections of members of Parliament, she appears to be capable of holding many public offices—such as Queen: "Queen regnant is she who holds the crown in her own right:" 1 Bl. Com. 219; also Marshall, Great Chamberlain, and Champion of Eng-

land, 2 T. R. 397; Constable of England, 3 Dyer, 285b. Anne Countess of Pembroke, held the office of hereditary Sheriff of Westmoreland, and exercised it in person. At the Assizes of Appleby she sat with the Judges on the Bench: 2 T. R. 397, note (a). Lucy, Countess of Kent, was Returning Officer, and signed the indenture and return of the member for the County of York in 1412. And in 1415, Margaret, widow of Sir H. Vavaseur, also acted and signed a similar indenture. So Lady Elizabeth Copley made the return for the Borough of Gatton in 1555, and again in 1555. Dame Dorothy Packington also acted as Returning Officer, and made the return of the two members for Aylesbury in 1572: *Prynne's Brev. Parl.* 152. And in 1628 the return of a member for Gatton was made by Mrs. Copley, *et omnes inhabitantes: Heywood on Elections* 160. Widows and spinsters were burgesses (electors) of Lyme Regis in 1577: 2 Lud. 13. A woman may be a commissioner of sewers, which office is judicial: *Callis* (1685), 250; and Clerk of the Crown in the King's Bench; 7 Mod. 270; governor of a workhouse: 2 Ld. Ray. 1014; sexton of a parish church in London: 2 Stra. 1114; keeper of the prison of the gatehouse of the dean and chapter of Westminster: 3 Salk. 2; governess of a workhouse at Chelmsford: 13 Vin. Abr. 159; custodian of a castle: Cro. Jac. 18, 13, Vin. Abr. 159; constable at the Sheriff's Court: 2 Hawk. P. C. c. 10, s. 36; which is an office of trust and likewise in a degree judicial: 2 T. R. 406; gaoler: 2 T. R. 397; overseer of the poor: *Ibid.* 395. Although it is uncouth in our law to have women justices and commissioners and to sit in places of judicature, yet by the authorities this is a point worth insisting upon, both in human and divine learning: for in the first commission ever granted (Genesis i. 28), by virtue of the word, *dominamini* in the plural, God coupled the woman in the commission with man: *Callis* 250. "A woman cannot be a pastor by the law of God. I say more, it is against the law of the realm:" *Per Hobart, C. J., Hob. R.* 148. Women who were housekeepers, and paid church and poor rates, were entitled to vote for a sexton: 2 Str. 1114. Women may vote for church wardens: *Tully v. Farrell*, 23 Gr. 49. "It might be more

reasonable that one or more churchwardens should be women than men; one-half the congregation are likely to be women, and a female overseer would be able to watch over their conduct, to counsel and advise them better than men:" *Per Proudfoot, V. C., Ibid.* In municipal elections, spinsters and widows who are rated for property are entitled to vote, but they lose that right on their marriage: *Reg. v. Harrauld, L. R. 7 Q. B. 361.* Marriage is at common law a total disqualification, and a married woman could not therefore vote, her existence for such a purpose being entirely merged in that of her husband: *Ibid.* Nor can it be supposed that the statute which was passed *alio intuitu* has, by a side wind, given them political rights: *Ibid.* By the Roman law when the wife passed *in manum viri*, all that she had belonged to her husband; but when she did not, all her property belonged exclusively to herself: *Sanders' Just. 242.* Among the semi-barbaric nations of a later time, marriage was a species of partnership, in which husband and wife had each their separate rights. Any profits or purchases with their joint property were divided between them in proportion to their separate property: *Spence's Orig. Laws 373.* By the custom of the ancient Britons, "women had prerogative in deliberative sessions touching either peace, Government or martial affairs:" 3 *Selden's Works* 10, cited L.R. 4 C. P. 389. Coming to Saxon times we find it stated: "All *fiefs* were originally masculine; and women were excluded from the succession of them, because they cannot keep secrets:" *West on Peers, 44, cited 7 Mod. 272.* "A woman is excluded from military tenures and from councils *quia qua audit reticere non potest*:" *Wright's Tenures 28.* Under the common law of England, as under the Roman law, a married woman was more helpless than infants and lunatics, the two other classes of persons under disability in whose company she habitually figured in English law. Everything she acquired at or after marriage went to her husband, unless she had a settlement to her separate use. She had no legal individuality apart from her husband. A *feme covert* can do no act to estop herself at law: *Per Lord Kenyon, C. J., 7 T. R. 539. Contra in equity: 1 Mac. & Gor. 529.* "The policy of

QUALIFICATION OF VOTERS.

Who may Vote.

Who may
vote at
elections.

7. [As amended by 48 Vic. cap. 2, sec. 3:]—
The following persons, and no others, being
males and of the full age of twenty-one years (*j*),
and subjects of Her Majesty by birth (*k*) or

the law thought women unfit to judge of public things, and placed them on a footing with infants; by 7 & 8 Wm. III. c. 25 infants cannot vote,—and women are perpetual infants:” *Per* Strange, Sol. Gen., 7 Mod. 272. Under our present political system, the Legislative, Executive and Judicial functions of the Government are carried on in the name of a woman: “Her Majesty, etc., enacts,” or “commands,” etc.; yet women, because of their sex, are said by the learned judges and sages of the law to be “disqualified by the common law,” or “by the uninterrupted usage of countries” from having any voice or representation in the process of legislation or government.

(*j*) See note (*g*) p. 6.

(*k*) “Subjects of Her Majesty by birth.” By the common law of Parliament no alien has a right to vote at elections: 12 Com. Jour. 367. The tests for determining who is a natural-born subject are: 1st. His parents must, at the time of his birth, have been under the actual obedience of the Crown. 2nd. The place of birth must have been within the dominions of the Crown; and 3rd. The time of birth must be considered: *Broom’s Cons. Law* 41. And all children born out of the King’s legiance, whose fathers or grandfathers by the father’s side, were natural-born subjects, are also deemed natural-born subjects themselves: *Heywood on Elections* 156. The children and grandchildren of natural-born British subjects, though born in a foreign country, are not aliens: *Salter v. Hughes*, Oldr. N. S. 409. Inhabitants of a conquered country, when received under the King’s protection, become subjects of the Crown: *Chap-*

man v. Hall, Cowp. 104. So, on the cession of Canada, when the King of England became King of Canada, the natives of Canada became his subjects: *Donegani v. Donegani*, 3 Knapp P. C. 84. Children of aliens, born within the dominions of the King are natural-born: *Calvin's Case*, 7 Co. Rep. 18. "The law doth superinduce that civil hereditary quality upon the blood of the son of an alien, by his birth in England, though when he took it from his [alien] father and mother it was void of that quality:" *Per* Sir Matthew Hale, C. J., in *Collingwood v. Pace*, 1 Vent. 427. Children born in a country of which their parents are not subjects, and while their parents are temporarily sojourning there, or in *itinere*, are natural-born subjects of that country, and may become entitled to a double nationality: *Lynch v. Clarke*, 1 Sand. Ch. 583. A child born of Canadian parents in the United States, during his mother's temporary sojourn there, is a citizen of the United States: *Munro v. Merchant*, 26 Barb. N. Y. 383; and he would also be a subject of the native country of his father: *Ludlam v. Ludlam*, 31 Barb. N. Y. 486. An English ship, public or private, on the high seas, is deemed English territory: *Broom's Cons. Law*, 42. There is no difference between an English ship and the soil of England; an English ship on the high seas may be considered as a floating island: *Forbes v. Cochrane*, 2 B. & C. 464. Children born on a ship in the open ocean are considered as born in the territory of the nation to which the ship belongs: *Vattel's Law of Nations*, 102. A person born on board an English ship, being within the protection of our law, will owe obedience to our Sovereign: *Broom's Cons. Law*, 42. If any of the King's ambassadors in foreign nations have children there of their wives, being English women, by the common law of England the children are natural-born subjects, and yet they are born out of the King's dominions: *Calvin's Case*, 7 Rep. 18; Cro. Car. 601. And such were inheritable before the statute 7 Anne, c. 5, but the statute makes it clear: 2 Vin. Abr. 265. Such children must be legitimate: *Shedden v. Patrick*, 1 Macq. H. Lds. 525; s. p. *Guyer v. Smith*, 22 Md. U. S. 239. A person born in New York in 1830, the son of a British subject,

who had emigrated from Ireland a short time previously, and who came to Canada a year or two after his birth, held to be a British subject: *Reg. ex rel. McVean v. Graham*, 7 U. C. L. J. 125. A natural-born subject does not lose his rights by residing in a foreign country, or by holding office there, and his son, being within 4 Geo. II. cap. 21, is a British subject: *Doe dem. Hay v. Hunt*, 11 U. C. Q. B. 367. A natural-born subject continuing to reside in the United States after the treaty of 1783: *Held*, he thereby lost his status as a British subject, and he and his children became aliens: *Doe dem. Patterson v. Davis*, 5 U. C. O. S. 494. Where the children of a person who remained in the United States after 1783, came to Canada in 1792 and 1794, and took the oath of allegiance, the disability was held to be removed by U. C. Act, 9 Geo. IV. cap. 21: *Montgomery v. Graham*, 31 U. C. Q. B. 57. When a voter was born in the United States, of British-born subjects, his father and grandfather being U. E. Loyalists, he was held to be a British subject: *Stormont (Place's Case)*, H. E. C. 21. Where a voter swore he was born in the United States, but that his parents were British subjects: *Held*, that his statement was that he was born in the United States of British parents: *Lincoln (2) (Mulrennan's Case)*, *Ibid.* 500; s. p. *Brockville*, *Ibid.* 129. An Englishman (A) who went to the United States after the treaty of 1783, and became a citizen of, and had taken the oath of allegiance to the United States, thereby abjuring his allegiance to the Crown of Great Britain, who held office and voted there, married an American woman, and had a son (B) born there, who resided there until his death in 1835, and who left a son (C, grandson of A), also born in the United States: *Held*, that the grandson (C) was, by virtue of the 13 Geo. III. cap. 22, British subject: *Fitch v. Weber*, 6 Hare 57; s. c. Jur. 76. Also, *Barrow v. Wadkin*, 24 Beav. 327; *Sharpe v. De St. Sacer*, L.R. 7 Ch. 343. The privileges conferred by the statutes in question upon the children and grandchildren of British-born subjects are the privileges of such children and grandchildren, and not of the parent, conferred upon them for the benefit of the state itself: *Per Wigram, V.C.*

naturalization (l), and not being disqualified

12 Jur. 76. And such grandson may vote at elections: *Lincoln* (2) (*Andrew's Case*). The status of British-born subjects which is conferred on children and grandchildren born abroad of natural-born British subjects is a merely personal status; and is not transmissible to their descendants: *De Geer v. Stone*, 22 Ch. D. 243. A natural-born subject may be a citizen of the United States for the purposes of commerce: *Wilson v. Marryatt*, 8 T. R. 31. A man need not be a citizen for political purposes, but he may for commercial or business purposes: *Fields v. Adams*, 7 Md. 209. An alien who has served on board an English man-of-war, for four years, in time of war: *Held*, to be a natural-born subject under 13 Geo. II. cap. 3: *Re Giraud*, 32 Beav. 385. See note (h) p. 6.

(l) The statutes relating to naturalization are as follows: 9 Geo. IV. cap. 21 (U. C.); 4 & 5 Vic. cap. 7; 9 Vic. cap. 107; 12 Vic. cap. 197; 18 Vic. cap. 6; 22 Vic. cap. 1; 31 Vic. cap. 66; 34 Vic. cap. 22; 41 Vic. cap. 13; (See 17 *Canada Gazette*, p. 2). See also 33 & 34 Vic. cap. 14 (Imp.) "Naturalization is the act by which the rights, privileges, and immunities of citizenship are conferred upon a person born an alien:" *Cooley's Con. Law* 77. The judgment of the Court that an alien has been admitted to citizenship is conclusive: *Stark v. Chesapeake*, 7 Cranch U. S. 420. The act of the Court admitting a citizen is a judgment of that Court, and the Supreme Court of the United States cannot look behind it, and enquire on what testimony it was pronounced: *Spratt v. Spratt*, 4 Peters U. S. 393. The production of the certificate of naturalization is sufficient proof of naturalization, without showing compliance with all the requisites of the law. The judgment of a Court admitting an alien is final and conclusive: *Ritchie v. Putnam*, 13 Wend. 524. "It is not sufficient to swear that certain voters are aliens without giving particular evidence to show that they were aliens, and how they were aliens, as by having been born

under the preceding sections, or otherwise by

in a certain place named, out of the allegiance of the British Crown :'' *Per* Robinson, C.J. in *Reg. ex rel. Carroll v. Beckwith*, 1 Pr. R. 284. The declaration of alienage made by the voter is evidence : *Middlesex (Barbre's Case)*, 2 Peck. 118. The brother of the voter proved that he was a native of Bordeaux, and ten years older than the voter ; that the voter was born there ; that his father's family were there ; that the voter came to England twelve years previously, and had not, to the knowledge of the witness, been naturalized, or received letters of denization : *Held*, evidence not sufficient to establish alienage against the voter : *Reading (Barthe's Case)*, Fal. & Fitz. 553. The voter testified that he was born in France, but that he had voted at the election in question. No other evidence was adduced : *Held*, that, as voting without naturalization was a criminal neglect or fraud, and constituted a misdemeanor, the legal presumption was that, having voted, he was naturalized : *People v. Pease (Rivinet's Case)*, 30 Barb. 588 ; in appeal, 27 N. Y. 45. The presumption of innocence, where one who is alien born has voted at an election, will prevail over the counter presumption that he is still an alien : *Brightly on Elections*, 413. " If every naturalized citizen must always be prepared with his proofs to maintain the grounds upon which he obtained his papers in all Courts and places in which they may be brought in question, the boon of citizenship, which is so liberally bestowed, would be hardly worth possessing :'' *The Acorn*, 2 Abbott U. S. Rep. 434. Evidence that a petitioner in an election case had lived in the United States, without showing that his parents were American citizens, was held insufficient to establish alienage : *Prescott*, H. E. C. 1. An alien who came to Canada in 1850, and who had taken the oath of allegiance in 1861, but who had taken no proceedings to obtain a certificate of naturalization, was held not qualified to vote : *Brockville (Bacon's Case)*, H. E. C. 129. Nor was an alien whose father had taken the oath of allegiance on obtaining the patent for his land qualified to vote : *Ibid.*

law prevented from voting (*m*), shall, if duly

(*Healey's Case*). Certain aliens took the oaths of allegiance and residence before a J. P. of a town, but such oaths were administered in an adjoining township within the same county: *Held*, that under the Naturalization Act 1871, (D) the justice was acting ministerially, and not judicially, and that the oaths were properly administered: *Lincoln* (2) (*Johnson's Case*), H. E. C. 500. Where evidence was given of parol admissions made by voters some years before the election, that they had been born in a foreign country, and also evidence that since such admissions they had voted at prior elections, and had sworn to the voter's oath as being British subjects by birth or naturalization: *Held*, (1) that the oath at the polls could not be treated as testimony, not having been given in any judicial proceeding; (2) that such oath only stated the result of certain legal facts; (3) there was therefore no presumption of naturalization sufficient to rebut the continuance of the original status of alienage: *Ibid*, (*Shenck's Case*). Where it was alleged that certain aliens voted illegally, parol evidence is admissible to show that their naturalization papers were fraudulently, or irregularly, issued or procured. If the act of pretended naturalization was, in fact, the act of the Clerk alone, and not, in a proper sense, the act of the Court, it would be a monstrous doctrine to hold that the certificate, bearing the Clerk's signature, was conclusive. Such a rule would permit the party committing the fraud to protect himself, by his own fraudulent certificate: *McCrary on Elections*, 24.

(*m*) The common law disqualifications are (1) *Infants*. Men within the age of one and twenty years: 4 *Co. Inst.* 5; and also by statute 7 & 8 Wm. III. cap. 25. (2) *Women*, being under legal incapacity: *Chorlton v. Lings*, L. R. 4 C P. 374. (3) *Lunatics*. "There are four manners of *non compos mentis*: (a) Idiot or fool natural. (b) He who was of good and sound memory and, by the visitation of God, has lost it. (c) He who is sometimes of good and sound memory, and some-

times not. (d) By his own act, as a drunkard : " *Beverley's Case*, 4 Co. R. 124. Lunatics so long as they have not understanding ; but in lucid intervals they are entitled to vote : *Hudson on Elections* 160. The vote of " a melancholy man and scarce *compos mentis* " was held good : *Wendover (Bening's Case)*, 13 Com. J. 42 ; " being ' *scarce compos mentis* ' admits that he was just in a situation to give his vote : " *Heywood on Elections* 166. One deaf, and dumb, and blind, if he can signify by signs the obligation of an oath, should be allowed to vote : *Rogers on Elections*. A voter, so drunk that he was incapable of knowing what he did, was allowed to vote : *Wigan (Lyon's Case)*, Fal. & Fitz. 695. (4) *Aliens*. The common law considers an alien as incapacitated to vote, because he labors under a personal incapacity in that he cannot be elected or appointed to any public office whatever : *Heywood on Elections* 157. (5) *Criminals*. A convict felon is disqualified : *Colchester (Jeffries' Case)*, 1 Peck. 508. The attain of felony is a disqualification : *Great Grimsby*, 1 Peck. 509 n. But the Crown may grant a pardon : 32 & 33 Vic. cap. 29, sec. 126 (D). A person convicted of felony, after enduring the punishment, is in law no longer a felon : *Leyman v. Latimer*, 3 Ex. D. 15, 352. Outlawry in criminal cases, as in treason or felony, is a disqualification : *Elliott on Electors*, 272. By the common law of Parliament, a person bribed to give his vote at an election is rendered incompetent to vote at that election : *Orme on Elections*, 111 ; but not at a subsequent election : *Ibid.* 112. Treating for the purpose of influencing an election was always an offence at common law : *Hughes v. Marshall*, 2 C. & J. 118. (6) *Peers of Parliament* are disqualified from voting by common law : *Earl Beauchamp v. Madresfield*, L. R. 8 C. P. 245. So is an Irish Peer : *Lord Rendlesham v. Haward*, L. R. 9 C. P. 252. And also a Scotch Peer : *Nicolson on Elections* (Scot.) 24. Being bound to serve the state in a capacity incompatible with the character of representative of the people, is a disqualification : *Male on Elections* 37. Legislative Councillors of Upper Canada were held not to have any legal or constitutional right to vote at elections : *York, Patrick's El. Cas.* 16 ; Jour. Leg. Assem. U.

entered on the list of voters (*n*), proper to be used at the election then pending, according to the provisions of *The Voters' Lists Act*, or of this Act (*o*), ^{R.S.O. cap. 9.} be entitled to vote at elections of members to

C. 1829, p. 72. The *Lex Parliamenti* is part of the law of this Province: *Reg v. Gamble & Boulton*, 9 U. C. Q. B. 554.

(*n*) See note (*a*) p. 1. The *Voters' Lists Act*, sec. 2, sub-s. 5, directs that "the name of the same person shall not be entered more than once" on the Voters' List. The intention of the Acts is to limit the franchise for Legislative elections to residents of the Electoral District; and to limit the registration of such to the polling division in which they respectively reside, or have the qualifying property; and thus to guard against the chances of personating or duplicating votes at an election. One already registered in an electoral division for one set of premises, cannot, while his qualification for such registration continues, be entered on the register for another set of premises a second time: *Re Druitt*, 1 Cr. & Dix (Ir.) 92. The Legislature only contemplated a single registry for each person, and never intended that a man having several distinct premises, out of which he could qualify as a voter, should be allowed to register on each of such premises: *Re Neale*, *Ibid.* 269. If the person objected to appears on more than one list, the party objecting should point out on which list he objects to the name being retained: *Elliott on Electors*, 317. When the law requires a voter to vote where he resides, place becomes an element of suffrage for a twofold purpose: outside the election district residence no man shall vote; but having that residence, the right it confers is, to vote in that district: *Chase v. Miller*, 41 Penn. St. 403. The law intends that the voter, *in propria persona*, should offer his vote in his appropriate election district in order that his neighbours might be at hand to challenge his right to vote if it were doubtful: *Ibid.*

(*o*) See notes (*z*) p. 63, and (*h*) p. 121.

serve in the Legislative Assembly of this Province, that is to say :—

Real property qualification.

Firstly. Every male person entered on the revised Assessment Roll, upon which the Voters' List to be used at the election is based, for any city, town, incorporated village or township, for real property of the value hereinafter mentioned, and being at the time of the final revision and correction of said Assessment Roll, and also at the time of the election, a resident of and domiciled within the Electoral District for which he claims to vote (*p*).

(*p*) " Resident of and domiciled within the Electoral District." This limitation as to residence applies to all voters at Legislative elections. A similar provision existed in the first Franchise Act (1 Henry V., cap. 1) ; but after having been disregarded for centuries, was declared to be "obsolete," by 14 Geo. III., cap. 58, and repealed. A permanent unbroken dwelling in a particular house is not required to constitute "residence." But it is essential to the qualification of voters who are entered as owners, tenants, occupants and landholders' sons that they should be assessed as such for a particular property, and should have the qualifying title to such assessed property, at the date of the revision of the Assessment Roll, and also at the date of the election. But if after the date of such revision of the Assessment Roll, the title to such assessed property is parted with, then the franchise qualification is not lost unless the voter removes out, and becomes a non-resident, of the electoral district. There is no condition of "continuous residence" attached to the above qualification as in the cases of income voters, wage-earners, and householders. The residence need not be an occupation as owner or tenant of a property, but must be an actual residence for the prescribed period within the Electoral District: *Beal v. Ford*, 3 C. P. D. 73. On the 28th October a resident of R obtained an appointment in D, and from that

2. Such persons must (subject to the provisions hereinafter contained) have been rated on such Assessment Roll as the owner (q), tenant

Title to real property necessary.

date to the 12th November he passed almost every day at D transacting his business, returning every night but three to his family at R. On his appointment he engaged a house at D, but did not occupy it until the 12th November, on which day he removed his family to it, and became domiciled in D: *Held*, that he was a resident of R until the day of his removal with his family to D: *Williams v. Whiting*, 11 Mass. 442. Plaintiff had a house and property at S, where he had a store and carried on business, and where his family resided. He was a member of the government at F, where he spent the greater portion of his time in the discharge of his official duties, and where he lodged at an hotel. A local statute authorized the assessors to assess the property of the inhabitants of F, and their income derived from any trade, profession, or calling within the Province: *Held*, that plaintiff was not an "inhabitant" of F: *Hathaway v. Cumming*, 6 Allen N. B. 161. Nor is a clerk in a public department in F, but who resided elsewhere, liable to be assessed in F: *Ex parte Smith*, 2 Pugs. N. B. 147. "An inhabitant, in its ordinary phraseology, means a dweller, or one who dwells, or resides, permanently in a place, or who has a fixed residence, as distinguished from an occasional lodger, or visitor, unless a statutory signification is given to the term, where used in a particular connection, different from its grammatical import, or its usual meaning in common parlance: *Per Ritchie, C.J., Ibid.* See further note (s) p. 176, and Case 9, Appendix.

(q) The term "owner," having no definite meaning in law, may refer to owners having the whole or partial interests in real estate: *Hopkins v. Provincial Ins. Co.*, 18 C. P. 74. Owner includes a person in possession of land and claiming title as purchaser: *McDougall v. McMillan*, 25 C. P. 75; and that notwithstanding the land may be subject to a vendor's lien: *Chatillon v. Canadian Mutual Fire Ins. Co.*,

(r), or occupant (s) of real property of the actual value of not less than the following :—

27 C. P. 450. The word "proprietor" has a less extensive meaning than owner, and may be construed as a possessor having some right in the land: *Brown v. Grand Trunk R. W. Co.*, 24 Q. B. 350. A deed conveying lands in fee simple to A, reserved to the grantor's "owl. use, benefit, and behoof the occupation, rents, issues, and profits of the said above granted premises," for and during the term of the grantor's life: *Held*, a conveyance in fee simple; *sed quære*, whether the reservation was void, or whether only the reservation passed subject to the life estate: *Simpson v. Hartman*, 27 Q. B. 490. A person possessed of two separate properties, in the same county, neither of which alone would give the necessary qualification to vote, but which together would be sufficient to qualify, is entitled to claim the two properties as giving him the necessary qualification as a voter: *Wood v. Hopper*, 1 C. P. D. 192. But not where the properties are in separate counties: *Beaver v. Watson*, 1 Colt. 268. Nor where some are held in fee and others by lease. By clause *seventhly* (*post*), the term "owner" in places where there is no Assessment Roll, is not to apply to persons claiming lands not patented by the Crown. See p. 216. A trustee under a will, having no beneficial interest in the property assessed to him, cannot vote: *South Grenville (Jones' Case)* H. E. C. 163.

(r) Where the tenancy of a house is annexed to an office or employment, it depends upon whether the occupation of the house is such as to create the relation of landlord or tenant. Where without any obligation to reside in a particular dwelling, an officer or servant chooses to occupy a house which is provided for him, the circumstance that he receives less salary or wages in consideration of the benefits he derives from occupying a house convenient for the discharge of his duty or service, or that he would have an allowance for rent or lodging money if he did not occupy it, will not prevent him from occupying as tenant, and having a right to vote: *Hughes v. Chatham*, 5 M. & Gr. 53. "There

actual

extensive

assessor

k R. W.

mple to

behalf

above

antor's

whether

ervation

, 27 Q.

ties, in

ive the

ould be

erties

: Wood

erties

t. 268.

lease.

places

ply to

a. See

ial in-

South

office

tion of

ord or

partic-

up a

hat he

enefits

he dis-

allow-

t, will

ving a

There

is no inconsistency in the relation of master and servant and that of landlord and tenant. A master may pay his servant by conferring on him an interest in real estate, either in fee, for years, at will, or for any other estate or interest; and if he do so the servant then becomes entitled to the legal incidents of the estate as much as if it were purchased for any other consideration. But it may be that a servant may occupy a tenement of his master's, not by way of payment of his services, but for the purpose of performing them, *required* to occupy in the performance of his contract to serve his master: *Per Tindal, C.J., Ibid.* A clerk who occupies a room in his employer's house, but is not bound to do so, and who if he resided out of the house would receive an increased salary to the value of the room, may be registered as a voter, although he would be obliged to give up possession at once if dismissed, or his employment otherwise ceased: *Parker v. Campion*, 5 Ir. C. L. 75. When residence in an official or other house is necessary or conducive to the official performance of the duty or service required, and is either expressly or impliedly made a part of such duty or service, there the relations of landlord and tenant are not created, and such official, or servant, has no right to vote: *Dobson v. Jones*, 5 M. & Gr. 112. A toll collector occupying the toll house is not entitled to vote: *Brockville (McArthur's Case)*, H. E. C. 129. A sergeant of militia occupied a house close to where the arms, &c., were stored. The house was assigned to him by the colonel to look after the stores, and if he left it without permission, he would be guilty of breach of discipline, and might be dismissed. A certain sum per week was deducted from his pay as occupier of the house: *Held*, not entitled to vote: *Fox v. Dally*, L. R. 10 C. P. 285. A person in charge of a lunatic's estate occupied the farms vacated by tenants of the estate, and in his account, passed before the Master in Chancery, entered his own name as tenant, and charged against himself the rent: *Held*, that he could not make himself tenant by his own act, and was not entitled to vote: *Burton v. Langham*, 5 C. B. 92. Where the voter was committed to prison, and the landlord's agent got possession of the house without the voter's consent, and let it to another

Assessed
actual
value.

In cities and towns, two hundred dollars ;
In incorporated villages and townships, one
hundred dollars (*t*).

Joint own-
ers.

3. Where any real property is owned or occupied jointly by two or more persons, and is rated at an amount sufficient, if equally divided between them, to give a qualification to each, then each of them shall be deemed rated within this Act, otherwise none of them shall be deemed so rated (*u*).

tenant whom the voter did not attempt to dispossess: *Held*, vote bad: *Wigan (Jump's Case)*, B. & Aus. 146. It is not essential that the lessor should have a valid title to the demise; and assuming any valid objection to exist, it would not effect the voter's qualification as "tenant" of the demised premises: *Fowle v. Trevor*, 1 Colt. 82. See notes (*n*) to (*p*) pp. 170-174.

(*s*) See notes (*i*) to (*m*) pp. 160-170.

(*t*) See note (*v*) p. 179.

(*u*) By the *Assessment Acts* (R. S. O. cap. 180, sec. 19 and 42 Vic. cap. 32, sec. 3) the separate share of each joint owner or partner may be entered on the Assessment Roll. But when the undivided joint interest is assessed, this clause disregards the actual value of each individual's share in the joint property, and divides the amount assessed among all the joint owners; and if the total assessed value is sufficient to qualify all joint owners according to the statutory ratio of value, then all may be entered on the Voters' List. But if all the joint owners are not assessed, and if some of such joint owners are women, the shares of such non-assessed joint owners, and of such women, must be estimated together with the shares of those assessed; and the whole assessed value divided amongst all who are actually and in law joint owners—whether resident or not—accord-

Secondly. [As further amended by 49 Vic. c. 3, s. 2:]—Every male person who is residing at the ^{Income} franchise.

ing to the statutory ratio of value. But this clause does not prevent each of the joint owners proving before the County Judge the actual value of his individual share in such joint property. Where four joint tenants and a dowress, whose dower had not been assigned to her, were assessed jointly, as occupants of real property, for \$900, the statutory value being \$200 per voter: *Held*, that the interest of the widow should not be deducted from the assessed value, and that the four joint tenants were entitled to vote: *Brockville (Gilroy's Case)*, H. E. C. 129. A widow's dower is a diminution of value: *Rogers on Elections* 47. An estate in dower is a freehold estate: *Co. Litt.* 621. The second husband of a dowress could vote under 20 Geo. III. cap. 17. Two partners occupied premises the title to which was vested in one of them; the assessment being sufficient to give a qualification to each, both partners were held qualified to vote: *South Grenville (Fitzgerald's Case)*, H. E. C. 163. Where only one of two joint tenants was assessed to the statutory amount (\$200) for the joint property: *Held*, not entitled to vote: *Ibid (Stewart's Case)*. A and B possessed conjointly and by equal moities a property valued at \$300. Neither could be put upon the electoral list, as the qualification for each was \$200. Neither could they, if they had been conjointly, and by equal parts, tenants of a property for which they paid annually \$20 to \$30, the qualification being \$20 each. But if A owned one-third of the property, and B two-thirds, then B, as the owner of \$200 of the assessed value of the property, could be put on the list and vote: *Re Kamouraska Electoral Lists*, 3 Q. L. R. 308. The provisions of the Imperial Acts are similar to the above. Premises were jointly rated to two persons; no common purpose for occupying the premises was shown, but by agreement each occupied distinct portions, paying rent and taxes for the same: *Held*, a joint occupation: *Johnston v. Flood*, 5 Ir. L. R. 49.

[49 Vict.
cap. 3.]

time of the election in the [Electoral District] in which he tenders his vote and has resided therein

Premises were occupied by a parish priest and seven curates ; each had separate apartments ; the parish priest was irremovable, but the curates were liable to be removed : *Held*, that they were all joint occupiers as tenants at will of premises sufficient to give a qualification to each : *Meyler v. Metcalfe*, *Ibid.* 54. Premises were devised to one of four brothers, subject to charges for the other three. The four brothers continued the business under the old style of their father's firm, and except the claimant, occupied the premises : *Held*, he was not a joint occupier : *Reardon's Case*, 6 Ir. L. R. 420. The sole lessee of a mill took his three sons into partnership, and all resided upon the premises. The rent was charged to the partnership account, in which the four shared equally, but the receipts for the rent were given in the name of the lessee alone : *Held*, that the sons were qualified : *Rogers v. Harvey*, 5 C. B. N. S. 3. The lessees of a house, taken for the purposes of the Corn Law League and in charge of the servants of the association, were held to be occupiers, as distinguished from the numerous other members of the association who subscribed to the funds (out of which the rent was paid) and who, as well as the lessees, transacted the business of the association at the house : *Lockett v. Bright*, 2 C. B. 193. A tenant of a dwelling house, otherwise qualified within the meaning of the Act, does not become a joint occupier by letting a portion of such house to a lodger : *Brewer v. McGowen*, 39 L. J. C. P. 30. The essential difference between joint-tenants and tenants-in-common is, that joint-tenants have the land by one title, and in one right, and tenants-in-common by several titles, or by one title and several rights : 1 *Co. Litt.* 758. Coparceners, however numerous, have but one estate among them ; but, subject to the sufficiency of value, each may vote : *Warren on Elections* 70.

continuously (v) since the completion of the last revised Assessment Roll of the municipality, and

(v) "Resided therein continuously." Whether a person is a resident is a question of fact, and depends upon whether there has been such a degree of inhabitancy as to be in substance and in common sense, a residence: *Wescomb's Case*, L. R. 4 Q. B. 110. A partnership carried on business in E. One partner resided more than seven miles from E, but he had the exclusive use of a bedroom and sitting-room in the business house, and he visited E every day except Sunday, to attend to business, and sometimes took his meals and slept there. *Held*, not an inhabitant and householder in E.: *Dipstale's Case*: *Ibid.* 114. Where a rector went to the continent for eight months, and assigned the rectory house as a residence, but retained three rooms which he locked up: *Held*, not a "resident" for six months, nor an "inhabitant" [or occupant] for a year: *Durant v. Carter*, L. R. 9 C. P. 261. Where the claimant gave up the use of his house to another for three months, retaining, however, two rooms: *Held*, that as he had voluntarily given up the possession of his house for good consideration for such period, there was a break in his residence, and he was disqualified: *Ford v. Pye*, *Ibid.* 269. Where a householder, qualified as a voter in N, left it and resided in another borough for fourteen weeks, it was held, on his return to N, that his claim to vote in N was lost, as he had relinquished the franchise he possessed there, by the break of residence: *Jeffrey v. Kitchener*, 7 M. & Gr. 99: s. c. 8 Jur. 138. A freeholder in E, who had a bedroom kept in his father's house there for his exclusive use, was absent during the statutory period, serving as a clerk under articles to a solicitor in London: *Held*, that being bound by the articles of service he had neither the liberty nor intention to return whenever he liked, and therefore had not resided in E for the qualifying period: *Ford v. Drew*, 5 C. P. D. 59. He had not the power to leave London without breach of contract: *Per Grove, J.*, *Ibid.* He must be assumed to

derives an income from some trade, occupation,

have intended to keep his contract ; and so must be assumed not to have had the intention to return : *Per* Lindley, J., *Ibid.* Undergraduates of Oxford and Cambridge who occupy rooms from which they are absent during the vacations, without the right to reside in or visit them, except by leave of the college authorities, cannot be held to have resided twelve months in the cities named : *Tanner v. Carter*, 15 Q. B. D. 231. "The authorities as to constructive residence have no application, as soon as it is shewn that the occupier cannot return to the premises during part of the year, at his own option : *Per* Cave, J., *Ibid.* An officer of the army, serving with his regiment in another locality, had rooms set apart for his exclusive use in his mother's house at E, and when he obtained leave of absence he resided there usually for three months in each year : *Held*, that being an officer subject to the will and pleasure of the Crown, he was not *sui juris* ; and as he could not return except on leave, he could not qualify : *Ford v. Hart*, L. R. 9 C. P. 272. Where a non-commissioned officer was absent from his residence on military duty for twenty-one days : *Held*, disqualified : *Atkinson v. Collard*, 16 Q. B. D. 254. Four militiamen who were enrolled in the militia, and had been absent from the city on militia service from three to five years, except when they returned for a short time each year on furlough, voted at an election. Their wives and children occupied the premises rented by them in the city : *Held*, under a statute requiring voters to be inhabitants of the city for six months before the election, that they were qualified to vote : *Rex v. Mitchell*, 10 East 511. A militiaman is a soldier, and his absence out of a parish for the purpose of training as a militiaman, is no break in his residence : *Horton v. Leeds*, 5 E. & B. 595. Absence under a contract when a party has no intention of returning is a break in residence : *Reg. v. Stapleton*, 1 E. & B. 766. Temporary absence in fulfilling a contract when there is an intention of returning, is no break in residence : *Reg. v. Brighton*, 4 E. & B. 236.

calling, office or profession of not less than two hundred and fifty dollars annually (*w*), and has

But an intention to return at a remote period is a break in residence: *Wellington v. Whitechurch*, 4 B. & S. 100. "The maxim that the husband's domicile is where his wife lives, applies only where a man is generally in one place, and occasionally elsewhere." *Per Cockburn, C.J., Ibid.* Unmarried men who have fully severed the parental or home relation, and who have entered the world to labor for themselves, usually acquire a residence in the district where they are employed, if they are honestly pursuing their employment there with no fixed residence elsewhere: *Allantown*, Brightly on Elections 475. The mere fact that a person is willing to swear, and does swear, that he considers the district his home, is not sufficient to entitle him to vote, if the facts and circumstances satisfy the Court that his home is elsewhere: *Ibid.* A person in gaol for a portion of the qualifying period is not *sui juris*, and cannot be registered: *Powell v. Guest*, 11 L. T. N. S. 599. If a person is imprisoned he is not complying with the requisites of the statute. I will assume he had a house, and that he had a wife and family, and the *animus revertendi* as soon as his imprisonment might be over; but during the time he was in prison he had not the liberty to return, by reason of a wrongful act on his part leading to such a confinement as prevented his being bodily present: *Per Erle, C.J., Ibid.* Imprisonment in a place out of the parish on a conviction for felony is a break in residence: *Reg. v. Pott & Shrigley*, 12 Q. B. 143. But not an imprisonment for non-payment of a fine upon a summary conviction: *Reg. v. Holbeck*, 16 Q. B. 404.

(*w*) The word "income" is *ejusdem generis* with salary: *Ex parte Benwell*, 14 Q. B. D. 301. Income is not that which comes in less an outgoing. In speaking of a man's income from an estate no one would deduct the interest payable on money borrowed. The income of the United Kingdom is not its revenue, less the interest on the national debt: *Per Bramwell, B. in Reg. v. Southampton*, L. R. 4 H.

been assessed for such income in and by the Assessment Roll of the municipality upon which the Voters' List used at the election is based (x).

L. 472. "Income" means the total amount recoverable without regard to any outgoings: *Per Lord Chelmsford, Ibid.* 483. "Income," is the gross revenue of an individual whether it arises from rents of real estate, interest on money loaned, dividends on stocks, or compensation for personal services rendered in any trade, profession or occupation: *Burrough on Taxation* 159. "Income," when applied to the income of a commercial business, in its natural and commonly accepted sense, should be construed as the balance of gain over loss: *Lawless v. Sullivan*, 6 App. Cas. 373, overruling s. c. 3 S. C. R. 117. The profits of a merchant in his business, including the value of his management, is not income: *Sterling v. Mayor of Fredericton*, 2 Pugs. N. B. 155. "Income" is derived from the trade, profession or calling, by the combined mechanical and intellectual labor of the person pursuing the trade, profession, or calling, even though such mechanical or intellectual labor is applied in combination with, or directly to, real or personal property, and so the real and personal property may contribute to the production of the income, as would be the case in most trades such as cabinet-makers, coach-builders, &c.: *Per Ritchie, C. J., Ibid.* The qualifying income may be derived from an office or employment held in other electoral districts than the one in which the income voter or wage-earner resides.

(x) The acceptance of this Income franchise by a person receiving an income under \$400 is voluntary; for by R. S. O. cap. 180, sec. 7, such person may avail himself of the right of exemption, or "may require his name to be entered on the Assessment Roll for such income, for the purpose of being entitled to vote at elections for the Legislative Assembly and Municipal Councils; and such income shall in such case be liable to taxation like other assessable income or property."

Thirdly. [As further amended by 49 Vic. c. 3, s. 2:]—Every male person entered on the last revised Assessment Roll as a wage-earner (*y*), who is residing at the time of the election in the [Electoral District] in which he tenders his vote, and has resided therein continuously (*z*) since the completion of the last revised Assessment Roll of the municipality, and who has during the twelve months next prior to being so entered, derived or earned wages or income from some trade, occupation, calling, office, or profession, of not less than two hundred and fifty dollars (*a*).

Wage-earners' franchise.

[49 Vic. cap. 3.]

2. In estimating or ascertaining the amount of wages or income so earned or derived by any person so entered as a wage-earner in the Assessment Roll of a municipality, not being a city, town or village, the fair value of any board or lodging furnished or given to or received, or had by such person as or in lieu of wages or as part thereof shall be considered or included (*b*).

How wages may be estimated.

Fourthly. [As further amended by 49 Vic. c. 3, s. 2:]—Every male person entered as a house-

Householder.

(*y*) See note (*e*) p. 135.

(*z*) See note (*v*) p. 207, on "continuous residence."

(*a*) This franchise is practically the same as the "Income voters' franchise." The only difference between the two franchises is in the title of the voter. By 49 Vic. cap. 38, sec. 6, "wage-earners" are exempted from taxation in respect of their earnings or income under \$400; but income voters are taxable upon \$250 and over that amount.

(*b*) See note (*r*) p. 202, on the occupation of official houses or rooms in lieu of salary or wages.

[49 Vic.
cap. 3].

holder (c) in the last revised Assessment Roll of the local municipality in which he tenders his vote, who is residing at the time of the election in the [Electoral District in which he tenders his vote] and has resided there continuously since the completion of the said last revised Assessment Roll (d).

Landholder's sons.

[49 Vic.
cap. 3].

Fifthly. [As further amended by 49 Vic. c. 3, s. 2:] Every landholder's son (e) who is resident at the time of the election in the [Electoral District] in which he tenders his vote, and has resided therein with and in the residence or dwelling of the landholder whose son he is, for twelve months next prior to the return by the assessors of the Assessment Roll (f) on which

(c) See note (z) p. 182.

(d) See note (v) p. 207, on "continuous residence."

(e) See note (u) p. 18. But the form of oath to be taken by a Landholder's son, at the election, requires him to swear that his father (or mother, &c.), was "owner, tenant or occupant of the property in respect of which your name is so as aforesaid entered upon the said Voters' List." See 48 Vic. cap 2, form 20. The sons of "occupants" are not included in the "Landholders' sons" franchise.

(f) "Twelve months next prior to the return by the assessor of the assessment Roll." This condition as to a year's residence with his father in the Electoral District prior to the date of the assessor's return of the Assessment Roll, may sometimes prevent a landholder's son from being registered as a voter; as in cases where the father has moved from one Electoral District to another within the qualifying year. The father's title may be acquired immediately before the date of the final revision of the Assessment Roll; and as no prior period of ownership or residence is prescribed

the Voters' Lists used at the election is based, and who has been duly entered and named in said Assessment Roll as such landholder's son.

2. Occasional or temporary absence (*g*) from such residence or dwelling for a time or times not exceeding in the whole six months of the twelve hereinbefore mentioned, shall not operate to disentitle a landholder's son to vote under this Act. [*The following was added by 49 Vic. cap. 3, sec. 2:—*The time so spent by any such landholder's son, as a mariner or fisherman in the prosecution of his occupation, or as a student in any institution of learning, situate within the

Occasional
absence.

as a condition of registration in his case, his name may be placed on the voters' list at the final revision, provided a proper application for that purpose has been made to the County Judge (see pp. 33, 39). But the sons of such landholder, not having been resident within the Electoral District for the statutory year as above required, cannot be entered on such Voters' List until the third year of such landholder's residence upon the assessed property. See note (*e*) p. 4, for the date of the "return," and note (*e*) p. 22, for the date of the "final revision," of the Roll.

(*g*) The term "occasional absence" is a mixed question of fact and law. "Occasional" is defined to mean: "incidental, casual, occurring at times, but not regular or systematic." It may be said to be the converse of "continuous," or "permanent." See further note (*v*) p. 207. A physical difficulty, not a legal difficulty, as when a man is travelling on the continent: *Atkinson v. Collard*, 16 Q. B. D. 254. Where on the Voters' List under "place of abode" a voter was stated to be "travelling abroad," his name was rightly retained on the Voters' List: *Walker v. Payne*, 2 C. B. 12, s. c. 9 Jur. 1014. Otherwise persons living or travelling abroad on public business, or for pleasure, might lose their votes: *Rogers on Elections* 143.

Province of Ontario (*h*) shall be considered as spent at home, and as having for the purposes of this Act been spent and passed with and in the residence as aforesaid of the landholder whose son he is.]

Indians.

Sixthly. Where there is a Voters' List, all Indians, or persons with part Indian blood (*i*), who

(*h*) This is in addition to the period of "occasional absence" allowed in the preceding part of this clause; and it counts as "spent at home," an absence which is compulsory for a portion of the qualifying period, as in the case of Oxford and Cambridge undergraduates: *Tanner v. Carter*, 16 Q. B. D. 231. Under the election laws of the United States a student at college, who has a house elsewhere, and resides at the institution for the sole purpose of education, does not thereby acquire the right to vote in the district in which the college is situated: *Brightly on Elections* 468. It was never pretended that the student acquired a residence at the place of the college, so as to become a qualified elector, liable to taxation and to the performance of municipal duties. The parental home, or the locality from whence the student came, was accepted as the district in which he was entitled to vote: *Ibid.* The fact that a man came into the place where he claims a residence for the sole purpose of pursuing his studies at a school or college there situate, and has no design of remaining there after his studies terminate, is not necessarily inconsistent with a legal residence, or want of residence in such place. This is to be determined by all the circumstances of the case. Among such circumstances, the intent of the party, the existence or absence of other ties or interests elsewhere, the dwelling place of his parents, or, in the case of an orphan just of age, of such near relatives as he had been accustomed to make his home with during his minority, would, of course, be of the highest importance: *Putnam v. Johnson*, 10 Mass. 488.

(*i*) The term "Indian" means, "first, any person of

ered as
urposes
and in
holder

ist, all
i), who

casional
e; and it
pulsory
case of
Carter,
United
ere, and
ucation,
strict in
ons 468.
a resi-
qualified
f muni-
y from
strict in
a man
the sole
e there
ter his
with a
This is
e case.
ty, the
ere, the
orphan
stomed
uld, of
ason, 10

son of

have been duly enfranchised (j), and all Indians or persons with part Indian blood who do not reside ^{Where a Voters' List.}

nong Indians, though they participate in the annuities, interest, moneys and rents of a tribe, band or body of Indians, subject to the same qualifications in other respects, and to the same provisions and restrictions as other persons in the electoral district (k).

2. But the Indians or persons with part Indian blood who are entitled to vote where there is no ^{Where no Voters' List.} Voters' List shall be only the following, namely :
"All Indians, or persons with part Indian blood, who have been duly enfranchised, and all unen-

Indian blood reputed to belong to a particular band; *secondly*, any child of such person :'' 43 Vic. cap. 28 (D.) An Indian who is a British subject, and the owner of real estate to the statutory amount, may be elected Reeve of a municipality, though he has not been enfranchised, and though he receives, as an Indian, annual payments from the property of his tribe: *Reg. ex rel. Gibb v. White*, 5 Pr. R. 315. Indians in Ontario are subjects: *Ibid.* "The British policy is to recognize the Indians as subjects, and hold them amenable to the laws as such :'' *Morse on Citizenship* 131. An Indian whose tribe has ceased to maintain its tribal integrity is subject to the jurisdiction as a citizen : *United States v. Elm*, 23 J. R. R. 419.

(j) By 43 Vic. cap. 28, "enfranchised Indian" means any Indian, his wife or minor unmarried child who has received letters patent granting him in fee simple any portion of the reserve allotted to each by the band; or any unmarried Indian who may have received letters patent for an allotment of the reserve.

(k) This imports into the Indian Franchise all the statutory rules regulating the franchise in the case of other voters.

Enfranchised Indians.

franchised Indians or persons with part Indian blood who do not participate in the annuities, interest, moneys, or rents of a tribe, band or body of Indians, and do not reside among Indians, subject to the same qualifications in other respects, and to the same provisions and restrictions, as other persons in the electoral district."

Oath for such voters.

3. Where there is no Voters' List any person alleged by a candidate, or the agent of a candidate, to be an Indian, or person with part Indian blood, shall, if required by such candidate or agent, or by the returning officer, take the following oath or affirmation in addition to any other oath required by a voter under the law:—

"You swear that you do not participate in the annuities, interests, moneys or rents of any tribe, band or body of Indians, and do not reside among Indians."

Or, at his option, the following:—

"You swear that you are not an Indian, nor a person with part Indian blood."

Voters where there is no Assessment Roll.

Seventhly. In such of the municipalities, townships, and places in the Electoral Districts of Algoma East, and Algoma West, East Victoria, East Peterborough, North Hastings, North Renfrew, South Renfrew, Muskoka and Parry Sound as have no Assessment Roll, and, subject to the provisions hereinafter contained, every male person of the full age of twenty-one years, being a subject of Her Majesty by birth or naturalization, and being not otherwise disqualified, who is

Qualification of voters.

Indian
nuities,
and or
among
ons in
ns and
electoral

person
candi-
Indian
ate or
follow-
other

in the
y tribe,
reside

, nor a

town-
icts of
etoria,
n Ren-
Sound
to the
le per-
eing a
aliza-
who is

at the time of the election a resident of and domiciled within the Electoral District for which he claims to vote, and is actually and *bona fide* owner of real estate in such electoral district of the value of two hundred dollars or upwards, or who is at the time of the election a resident householder of such place, and has been such owner or householder for the six months preceding the election.

2. A person is not an owner within the meaning of the said provision designated seventhly, where the land of which he claims to be owner has never been granted or patented by the Crown; and a person who is a mere lodger or boarder in a house is not a "resident householder" in respect of such house.

Meaning of
"owner,"
and "resi-
dent house-
holder."

3. In any part of the Electoral District of Algoma West, Algoma East, Muskoka, or Parry Sound in which there is no Assessment Roll or Voters' List, residence by an owner shall be necessary for the same period as residence by a householder, in order to qualify a voter.

Residence
required in
certain dis-
tricts.

Eightly.—No person shall be entitled to vote in unorganized territory on property which is wholly or partly in an organized Municipality.

Voters in
unorganiz-
ed terri-
tory.

APPENDIX.

OPINIONS OF THE JUDGES OF THE COURT OF APPEAL ON THE VOTERS' LISTS ACTS.

CASE 1.—COUNTY OF HASTINGS.

OPINION OF JUSTICES BURTON AND PATTERSON.

A person becoming Owner, etc., between the time of the making, and of the final revision, of the Assessment Roll cannot be added to the Voters' List on a complaint of a voter under sec. 9 of R. S. O. cap. 9. [See Case 7 p. 227.]

A person receiving an income up to the exempted amount of \$400, who is not assessed on the Assessment Roll, cannot be added to the Voters' List when he has not required his name to be entered on the Assessment Roll.

A case submitted by Judge Sherwood, under 41 Vic. cap. 21, sec. 11, asks if a Judge, holding a Court for the revision of the Voters' List under *The Voters' Lists Act*, ought, on notice of complaint in conformity with the 9th section of the Act, to enter the names of persons under the following circumstances :

First.—A person who is a *bona fide* owner or occupant of real property of the value of \$400; and who was the owner or occupant thereof at the time of the final revision and correction of the Assessment Roll for the municipality in which the property is situated.

These facts present the case of a person who does not appear to have been, at the time of the making of the assessment, liable to be rated for the property; but who acquired it before the final revision and correction of the roll, under circumstances which are not shown to be those provided for by the third sub-section of section 8 of *The Voters' Lists Act*.

We are, therefore, of opinion, that the Judge ought not to add his name to the Voters' List.

Secondly.—A person who has been in receipt of an income from a trade, calling, office or profession, of not less than \$400 annually; and has resided in the municipality before and since the completion of the last revised Assessment Roll, it being that on which the Voters' List is based.

The person is not liable to be rated for the said income for two reasons; first, because income is exempt to the amount of \$400; although he might, if he had thought fit, have required his name to be entered on the roll for it; and, secondly, because it does not appear that his income during the year preceding the making of the assessment amounted to four hundred dollars.

We are, therefore, of opinion that the Judge ought not to add his name to the Voters' List.

GEO. W. BURTON,
J.A.
C. S. PATTERSON,
J.A.

Osgoode Hall, 3rd July, 1878.

CASE 2.—COUNTY OF PEEL.

OPINION OF MR. JUSTICE PATTERSON.

When the omission to insert a voter's qualification on the Voters' List is the fault of the Clerk, it is the duty of the Judge to correct the list on hearing an appeal against the right of such voter to be registered.

In submitting a case for the opinion of the Court, the County Judge should make a statement of facts, so as to put the Court in possession of the precise materials which the County Judge has before him.

The County Judge of the County of Peel, asks the following question:—

In case the name of any person appears in the Voters' List as entitled to vote in any particular capacity; whether as a farmer's son,

owner, tenant or occupant, or on account of income, or so appears in respect of certain specified property ; if, upon an appeal against the right of such person's name to be in the Voters' List, coming on to be heard before the Judge of the County Court, it appears that such person is not entitled to vote in the capacity in which he is named, or in respect of the property set opposite his name in the Voters' List, but is entirely in another capacity, or in respect of other property ; has the Judge, upon such person's application then made, and without any notice of appeal being served by him, a right to correct the error, by changing in the Voters' List the specification of capacity, or the description of property, as the case may require ?

I am unable to answer this question as put by the Judge, because it is not stated whether the person whose name is in question appears upon the Assessment Roll, for the qualification which entitles him to vote. If he does so appear, and the omission to insert the qualification in the Voters' List is therefore the fault of the Clerk, it would in my opinion be the duty of the Judge, on the hearing of the appeal against the right to have the name on the list, to correct the list.

But, if the right to vote is in respect of some qualification which does not appear upon the Assessment Roll, I cannot say, in the absence of a specific statement of the facts of the case, whether a formal appeal on the part of the voter is or is not necessary.

I may take this occasion to call attention to the terms of section 11 of *The Voters' Lists Finality Act*, which authorizes any County Judge to state a case on any general question, arising or likely to arise ; and to point out that the objects of that section will usually be better attained by making a direct statement of facts, either actual or hypothetical, so as to put the Court in possession of the precise materials, which the Judge who states the case has in his mind or in evidence before him ; than by putting the case in the form of a question, which, however carefully framed, is apt to be less full and precise than the direct statement.

C. S. PATTERSON,
J.A.

Osgoode Hall, 19th July, 1878.

CASE 3.—COUNTY OF MIDDLESEX.

OPINION OF CHIEF JUSTICE MOSS.

Where a tenant appeals to increase the assessment so as to give him a right to vote, notice should be served upon his landlord as a person appealed against on the ground of too low an assessment.

The County Judge of the County of Middlesex has stated the following case:—

“The tenant of certain land in a township is assessed jointly with his landlord for the sum of \$125 in respect of the said land, consequently the tenant's name is omitted in the Voters' List. He thereupon applies to the Judge sitting to revise the Voters' List, to have his name inserted in it, upon the ground that the land instead of being assessed at \$125, should have been assessed at \$200, which would entitle him to a vote. The landlord does not appear, and, so far as is known, has had no notice of the intended application by the tenant. The following questions have arisen on this state of facts:

“1. Can the Judge sitting to revise the Voters' List raise the assessment of this land at the instance of the tenant, without the concurrence or knowledge of the landlord?

“2. Should notice of the intended application by the tenant be given to the landlord? Has the Judge, when revising the Voters' List, power to raise the assessment of this land against the will of the landlord, or in his absence?

“3. If the Judge has not such power, can he, when sitting to revise the Voters' List, separate the assessment of the land—that is to say, can he in respect of it, raise the assessment so far as relates to the tenant to \$200, and allow the assessment to remain at its former amount, that is, \$125, so far as relates to the landlord?”

I am of opinion that the proper course to be pursued is to treat the landlord as a person appealed against on the ground of too low an assessment, and to cause notice to be served upon him, of the time when the matter will be tried, as provided by sub-sec. 3, sec. 56, chap. 180, R. S. O.

Whether he appears or not, the Judge can then make such order as the evidence adduced before him warrants.

THOMAS MOSS,

C.J.A.

Osgoode Hall, 26th October, 1878.

CASE 4.—COUNTY OF MIDDLESEX.

OPINION OF MR. JUSTICE PATTERSON.

When the transferee of a person assessed for property obtains his title before the final revision of the Assessment Roll, and applies to have his name entered for such property, the County Judge cannot entertain his application unless notice has been given to the transferor.

Where such an application is bona fide, and the want of notice arises from inadvertence, the County Judge may give leave to amend.

And such transferor has an independent right to apply to be entered for other property; but his claim must be advanced by the same procedure as governs the case of a transferee.

The Judge of the County Court of the County of Middlesex states the following case:—

A has been assessed for certain land as owner to a sufficient amount to entitle him to vote, and his name is on the Voters' List: B claims that A has transferred this land to him before the final revision of the Assessment Roll. The name of B does not appear on the Voters' List, and he has not been assessed for this land. He has applied to have his name inserted in the Voters' List by the Judge; but in his application he has not asked to have his name inserted in the list instead of A; in fact he has made no mention whatever of A in his application, and of course no notice has been given to A.

Upon these facts two questions are asked:—

First.—Can the name of B be properly inserted in the Voters' List as the owner and voter in respect of this land, and the name of A remain therein also as the owner and voter in respect of the said land?

Second.—If this cannot be done, can the name of B be inserted in the list, and the name of A removed therefrom under the circumstances stated above?

The whole power of the Judge to deal with the matter depends upon sub-section 3 of section 8 of *The Voters' Lists Act*, (R. S. O. cap. 9) which provides that if any person named as a voter in the list has, before the final revision and correction of the Assessment Roll, parted with the property in respect of which his name was entered in the Voters' List, the person to whom he has transferred the

property or who is in possession of the same, shall be entitled to apply (Form 5) to the Judge to be entered on the list instead of the person originally named therein. The application not being in compliance with these provisions, the Judge has, in my opinion, no power to entertain it as presented to him; although if satisfied of the *bona fides* of the application, and that the insufficiency of the notice arose from mere inadvertence, he might consider the case a proper one for the exercise of the power of amendment given by section 18.

A further question is put by the learned Judge, viz.:

Assuming the same state of facts to exist as is mentioned in the above case, with the difference that B has made application to the Judge in the Form 5; so that he not only asks to have the name inserted on the Voters' List, but he also asks to have it inserted instead of the name of A. The Judge on finding good grounds for granting the application, accedes to it, and thereupon A applies to the Judge to have his name inserted in the Voters' List under sub-section 3, in respect of other land recently acquired by him in the municipality, without any application or notice previously made or given for this purpose. The question is, can this be done?

The third sub-section, the first part of which I have just quoted, proceeds thus: "And the person who has parted with such property may apply to the Judge to be entered on the list in respect of any other property which he may have acquired in the municipality, and for which he has not been assessed, or respect of income; and the proceedings to be taken in such case shall be the same as in the cases of appeals under this Act."

By section 9 the initiatory proceedings in an appeal is a notice to be given to the Clerk within thirty days after he has posted up a copy of the Voters' List in his office; which (by section 3) he is to do immediately after he has made the list and had copies printed, and within thirty days after the final revision and correction of the Assessment Roll.

The right of the person who has parted with his property to apply to the Judge, under sub-section 3, to be entered on the list in respect of other property he may have acquired, and for which he is not assessed, is not, in my opinion, consequent or contingent upon the circumstance or accident of the name of his vendee or assignee being entered upon the list in his stead. I take it to be an independent right given to him, of the same character as that given to the person

who has acquired his original property ; which is given only in respect of property acquired before the final revision and correction of the roll ; and which must be advanced by the same procedure, as well touching the application (Form 5) to be entered on the list instead of the person originally named therein in connection with his newly acquired property, as touching the other proceedings in appeals under the Act.

I therefore answer this question in the negative.

C. S. PATTERSON,
J.A.

Osgoode Hall, 13th December, 1878.

CASE 5.—COUNTY OF HURON.

OPINION OF MR. JUSTICE PATTERSON.

A Municipal Court of Revision cannot enter names on the Assessment Roll on a request contained in a letter addressed to the Township Council, or without a complaint formally made according to the provisions of the Assessment Act.

The procedure to object to names so added is by an appeal to the County Judge.

Persons so entered may be removed from the Voters' List either as being "wrongly stated therein," or as "not entitled to vote."

In the matter of an appeal to the Judge of the County Court of the County of Huron, under the *Voters' Lists Act*, complaining of the insertion of certain names in the Voters' Lists for the Township of Stanley.

I understand the material facts to be as follows :—

The names are on the roll certified as the last revised Assessment Roll.

They were not on the roll as returned by the Assessors ; and no proceedings by way of appeal to the Court of Revision were taken under section 56 of *The Assessment Act*. But during the sitting of the Court of Revision (that is at some time between its first and last sitting) one D. H. Ritchie wrote a letter to the Township Council in which he requested the Court of Revision to insert the names in the

Assessment Roll; and, upon that request, the Court of Revision added the names.

The notice of appeal under *The Voters' Lists Act*, objected to the names being on the List, on the ground of want of qualification, as well as because they were improperly placed on the Roll; but only the latter objection was insisted on.

My opinion is asked upon this contention.

Under section 8 of *The Voters' Lists Act*, the lists are subject to revision on the grounds (amongst others) of the names of voters being "wrongly stated therein;" or of names of persons being inserted in the list who are "not entitled to a vote."

Under *The Election Act* (R. S. O. cap. 10, sec. 7) one material part of the description of the person entitled to vote is that he is "entered on the revised Assessment Roll upon which the Voters' List to be used at the election is based" for the requisite qualification.

This must, of course, be read in connection with the power to add names on the revision of the Voters' List, which does not come in question in the present case.

The duty of the Clerk of the Municipality under *The Voters' Lists Act* is, to make a correct alphabetical list of all male persons being of the full age of twenty-one years, and subjects of Her Majesty by birth or naturalization, and appearing by the Assessment Roll to be entitled to vote in the municipality.

The result of these several provisions (as far as it concerns our present purpose) is that the Voter's List as prepared by the Clerk is to contain the names of all male persons of full age and subjects of Her Majesty who are entered on the last revised Assessment Roll for the requisite qualification; and it follows that the County Judge cannot say, as it would not be consistent with the fact, that any one of such persons is "wrongly stated therein," if that expression includes the imputation that the name should be there; nor can he say that they are "not entitled to vote," unless on the ground of want of qualification, minority or alienage.

But if the list as prepared by the Clerk contains names which are not entered on the Assessment Roll, and which therefore do not fall within the description of persons entitled to vote contained in section 7 of *The Election Act*, it would seem that the Judge has power to remove them from the list, either as being "wrongly stated therein" or as being "not entitled to vote."

The question therefore is were these names entered on the Assessment Roll within the meaning of the enactments?

In my opinion they were not so entered.

Section 56 of *The Assessment Act* (R. S. O. cap. 180) prescribes the steps to be taken in appealing to the Court of Revision; and by subsection 4 it is expressly enacted that "no alteration shall be made in the Roll, unless under a complaint formally made according to the above provisions."

The addition of the names by the Court of Revision was therefore unauthorized. There was no opportunity of removing the names again by appeal from the Court of Revision to the County Judge under *The Assessment Act*, because the only power given to the Judge (by sec. 59) is to review the decision of the Court of Revision on an appeal to that Court, and here there was no such appeal.

Therefore the only way to raise the objection is that adopted by the complainant.

I regard the added names as something foreign to the Assessment Roll, with which the statutes deal; and as much so as if they had been surreptitiously added after the Roll had been finally passed by the Court of Revision.

My opinion therefore is that the Judge of the County Court has jurisdiction to remove the names in question from the Voters' List.

C. S. PATTERSON,

J. A.

Osgoode Hall, 13th December, 1878.

CASE 6.—COUNTY OF HALTON.

OPINION OF CHIEF JUSTICE MOSS.

The terms "householder" and "occupant" are treated as convertible terms by the Assessment Act.

When a person is entered as "occupant" who is entitled to be entered as "tenant," the notice of objection should be framed accordingly; and the County Judge can amend such notice to make it accord with the true state of facts.

The County Judge of the County of Halton has submitted the following question :

"The name W C appears on the Assessment Roll as 'Householder' for specified real estate, valued at \$500, and in the Voters' List as 'Occupant' of the same property. On an appeal against the right of the said W C to be on the Voters' List (because not an occupant) coming on to be heard, it appears by the evidence that the said W C is not entitled to be on the Voters' List as occupant, but that he is entitled to be on as tenant. Has the Judge, upon the said W C's application then made, without any notice of appeal being given or served by the said W C, the power to correct the Voters' List, by changing the capacity of the voter from occupant to tenant?"

The change of description from "Householder" to "Occupant" was properly made under the authority of the 33rd section of *The Voters' Lists Act*. These had, indeed, been treated as convertible terms by *The Assessment Act*. Upon referring to the form of notice given in the Schedule, as furnishing a key to the interpretation of the 8th and 9th sections, it appears that this objection could only be classed under List No. 4. It is not the case of a voter being wrongfully inserted in the list. It is a case in which the objection, if in accordance with the actual facts, should have read thus: "Should be described as tenant, not occupant." This is shown by the last illustration given in List No. 4, which is "should be described as owner, not tenant." Under the comprehensive language of the 18th section, the Judge could amend the notice so as to make it accord with the true state of facts, if such a formality were deemed necessary.

I am therefore of opinion that this question should be answered in the affirmative.

THOMAS MOSS,
C. J. A.

Osgoode Hall, 20th December, 1878.

CASE 7.—COUNTIES OF LEEDS AND GRENVILLE.

OPINION OF CHIEF JUSTICE MOSS.

No appeal can be made by a voter respecting persons becoming tenants, etc., after the time for appeals to the Municipal Court of Revision, but before the final revision of the Assessment Roll. Such appeals can only be made by the persons to whom the property has been transferred, or who are in possession of the same. [See Case 1, p. 218.]

The Junior Judge of the County Court of the United Counties of Leeds and Grenville has submitted a case which may be thus stated ;

A B, a voter, gave to the Clerk of the Municipality, a notice in Form 6 of the Act, complaining that certain parties were entitled to be voters, but were wrongfully omitted from the Voters' List.

Upon the annexed list were set forth the following statements :

Charles Best.—Should be entered as tenant to P. W. Strong, in store on King street : Polling sub-division No. 1, Centre Ward.

John Hunter and Edward Barry.—Should be entered as tenants to Thomas Bennett, in store on King street : Polling sub-division No. 2, Centre Ward, No. 315 on Roll.

Carss & Brown were duly assessed in 1878, for the Strong property in King street, and occupied it until the 10th or 11th June, 1878, when they moved out of it ; and Charles Best, on the 11th June, 1878, vacated the property of Thomas Bennett, mentioned in the appeal as to Hunter & Barry, for which he, Best, had been duly assessed in 1878, and on the same day moved into the property vacated by Carss & Brown. On the 20th June, Hunter & Barry, both of whose names are entered on the Assessment Roll, but not for that property, or in that ward, moved into the premises vacated by Best. The Assessment Roll was returned on the 1st May and was finally revised by the Judge on the 23rd day of July, 1878. All the changes previously referred to were made after the time for making appeals to the Court of Revision had expired, and before the final revision and correction. Upon part 1 of the Voters' List for 1878, Carss and Brown were entered for the Strong property, and Best for the Bennett property. No application was made personally either by Best or by Hunter & Barry. Upon the hearing before the learned Judge it was conceded that Carss & Brown can, in respect of the Strong property, take the oath, Form 18, cap. 10, R. S. O. and the oath set forth in sec. 10, cap. 174, R. S. O. ; and that Best can do the same in respect of the Bennett property. Upon this state of facts the learned Judge asks whether such changes can be made upon the application of A B, or whether Best and Hunter & Barry must themselves be the applicants. He had also asked whether (in case such changes can be made upon A B's application) the names of Carss & Brown should be struck out, when Best's name is inserted for the same property ; and whether his name should be struck out when the names of Hunter & Barry are inserted for the property for which he was assessed ; and whether, if the Strong property is assessed for a higher sum

than the Bennett property, an order can be made under sec. 22 of the Act for Best to pay the difference in taxes.

I am of opinion that these changes cannot be made upon the application of A B. The case falls precisely within the terms of sub-section 3 of section 8 of *The Voters' Lists Act*.

Having regard to whole scope of the provisions of the statute, I think that the intention is that such changes should be made only upon the application of the person to whom the property has been transferred, or who is in possession of the same.

The other questions proposed by the learned Judge upon the hypothesis that such changes could be made at the instance of any voter who may choose to apply, are very suggestive of the confusion and embarrassment which that interpretation of the statute would create.

THOMAS MOSS,

C.J.A.

Osgoode Hall, 21st December, 1878.

CASE 8.—COUNTY OF ELGIN.

OPINION OF CHIEF JUSTICE MOSS.

Where the owner of a farm and his sons do not reside or have their home or sleeping apartments on the farm owned by such owner, but on another farm of which he is lessee, his sons cannot be entered on the Voters' List as "Farmers' Sons."

In order to constitute a residence a person must possess a home and a sleeping apartment.

The County Judge of Elgin has stated a case to the following effect:

Richard A. Norman and James O. Norman are the sons of Richard Norman, the owner in fee of 50 acres of land, which he cultivates as a farm. His sons live with him at home, but father and sons all live on another farm of which the father is only tenant for a term of years. The two farms do not adjoin each other, but are divided by the farm of an adjoining proprietor. Both sons assist the father in cultivating both farms. At the time of the assessment the father occupied both farms, but the dwelling house is on the leasehold. Both sons are over 21 years of age, and natural born subjects of Her Majesty.

The father does not pay either son wages, or give them part of the produce of either farm, and they are in all other essentials "Farmer's sons." The question is whether under the circumstances, Richard A. Norman and James O. Norman are entitled to be entered on the Voters' List as Farmer's sons.

It appears from this statement that the question is, whether there has been such a residence on their father's farm as to entitle them to the franchise. It may be not unimportant to observe that the right of a farmer's son to vote does not follow from, and is not co-extensive with, his right to be entered on the Assessment Roll. If he is a *bona fide* resident on the farm at the time of the making of the Assessment Roll, he is entitled to be entered, rated, and assessed on the Roll, in respect of such farm, in a certain prescribed manner varying with the circumstances (Assessment Act, sec. 20). In order to entitle him to vote he must be resident at the time of the election in the District or Municipality in which he tenders his vote, and must have resided therein, on the farm of his father or mother, for twelve months next prior to the return by the assessors of the Assessment Roll on which the Voters' List used at the election is based. Still, each of these provisions contemplates a *bona fide* residence on the farm as essential. The term "farm" has received a precise definition in the statute, namely: "land actually occupied by the owner thereof, and not less in quantity than twenty acres." There is no doubt that in this case the father is the owner and actual occupant of the land, in respect of which the franchise is claimed by his sons. A residence on this farm would clearly entitle them to the right, while residence upon the farm of which their father is not owner, but only tenant, would be insufficient. The proper meaning of the term "residence," as used in relation to rating or voting, has been discussed in numerous English authorities, which I have examined. No precise definition has been formulated, but rather the Courts have been anxious to point out that there may be shades of difference in the sense in which the word is used in different Acts. But in all the idea of a *home* and a *sleeping apartment* seems to be either expressed or implied. In a standard work on registration it is laid down that "in order to constitute residence, a party must possess at least a sleeping apartment," and this statement seems to have received the approval of Chief Justice Erle, in *Powell v. Guest* (18 C. B. N. S. 72).

The opinion which I have formed is, that the applicants are not

residents upon the farm which is owned and occupied by their father. Their residence is upon the farm of which he is lessee. It cannot be pretended that they have two residences; nor, on the other hand, can it in my judgment be held that the two properties are one farm, so as to transfer the actual residence from the fifty acres which the father does not own, to the fifty acres which he does own. The circumstance that there is only a single farm between the two properties does not improve their position. It is unnecessary now to inquire whether, if they lay side by side, the exigency of the statute would be satisfied. It is sufficient to say that the intervening land divides them as effectually for the purposes of this Act, as if they were at opposite corners of the Township.

I therefore answer the question in the negative.

THOMAS MOSS,
C.J.A.

Osgoode Hall, 11th January, 1879.

CASE 9.—COUNTY OF ELGIN.

OPINION OF CHIEF JUSTICE MOSS.

A person residing and working on a farm with his father, under a promise of a deed of part of the farm, may be entered as "owner" on the Assessment Roll; but he should be entered as a "Farmer's son" on the Voters' List.

Persons should not be disfranchised if they have a right to vote; and notices of appeal should be amended, if necessary, to preserve the franchise.

The failure of the Assessor to satisfy the incidental requirements of the Assessment Act does not enable a complainant to have names struck off the Voters' List.

The Assessor is not to determine whether there has been a sufficient residence to qualify a person as a voter.

The County Judge of Elgin has, under the provisions of the Act, stated the following case for the opinion of the Court:

"Matthew F. Haney, of the township of Malahide, was assessed as owner of a farm in Malahide—and was inserted as owner of the same in the Voters' List—and an appeal was made to me to strike his name off the list, because he was not owner at the time of the assessment.

"Previous to July, 1877, he had lived away from home. His father on the 16th July, 1877, sent for him and told him if he would come home and live and help him in the work of the farm, he would give him a deed and convey to him in fee simple fifty acres of the farm. Matthew F. Haney complied with the father's request, but the father had not made the conveyance at the time of the assessment, and the son had no writing from the father to bind him to the agreement.

"The son is a shoemaker, and besides helping the father on the farm, makes boots and shoes for the family of his father without remuneration, and he lives at home working for his father, who derives the full benefit of all his work and earnings without wages.

"It is true he is not *owner*, or *occupant*, or *tenant* of the farm, and it is contended that because there is no application on his own part, or on the part of any one else competent to make a complaint, he must be altogether struck off the list as '*owner*,' and that the Judge has no right to change his designation on the list from '*owner*' to '*farmer's son*.'

"On the other hand it is contended, that if a case is once properly brought before the Judge, by any competent *person*, although the notice be not technically correct, the Judge is obliged, upon hearing the facts, to decide according to the merits and justice of the case, and to change or amend the complaint and dispose of it as the facts warrant.

"I therefore desire the opinion of the Court, or a Judge, as to whether I may not, in view of the object in view, in correcting and amending the Voters' List, and in view of the facts of any and every case, aim at placing or retaining every name on the Voters' List which ought to be inserted on it upon a complaint made, and of striking off every name which ought not to have been inserted, provided the case is brought before me on appeal in a regular way, whether the notice be specifically and technically correct or not. It occurs frequently that a complaint is made of one case, whilst the facts developed at the time of evidence being given shew that an entirely different cause of complaint might and ought to have been made; and it also frequently occurs that a complaint is made that a certain individual is not '*owner*' of a lot described in a certain way on the Voters' List, whereas the facts upon the hearing shew that he is not '*owner*' or '*tenant*,' or that he is '*occupant*' and had a right to be so inserted for that, or some other lot; or it may be shown that although he is

not 'owner' of the land described, but that he is owner of some lot, in the same or some other concession, or that his name is wrongly placed in a certain polling sub-division, whilst his name ought properly to have been placed in another polling sub-division. I therefore desire the opinion of the Court, or a Judge, as to whether I am bound by the strict technicality of the notice given, or whether I ought not in the fullest aim at carrying out the intentions of the Legislature, when a case is once brought before me, to allow any other elector who chooses to intervene and have a notice amended if necessary, and to give the fullest scope for the purpose of making the Voters' List as complete as it is in my power to make it, when an error is made manifest by a regular notice, or comes up incidentally at the hearing."

If I correctly apprehend the case of Matthew F. Haney, it is that being a farmer's son, resident upon fifty acres of land, owned and actually occupied by his father, he has been entered, rated and assessed on the roll in respect of such farm as "owner;" that this entry has been duly transferred to the Voters' List; and that his right to have his name retained on that list is contested, on the ground that he has no title to the land either at law or in equity. If that be a correct statement of the case, I think that his name should remain on the list, and the Judge may add the description "farmer's son."

Haney had a perfect right to have his name entered on the roll as an owner of the land. The 1st sub-sec. of sec. 20, provides that the son may be entered jointly with the father, and as if such father and son were actually and *bona fide* joint owners thereof. The 6th sub-sec. of the same section provides that a farmer's son, entitled to be assessed under the preceding sub-sections, may require his name to be entered and rated on the roll as a joint or separate owner, occupant, or tenant of the farm, as the case may be, and in that event he becomes liable for the taxes as such owner, occupant, or tenant. By virtue of these two sub-sections Haney had the right to be entered as owner, either jointly with his father or separately. That is the substance of the direction given with reference to his entry upon the roll. He is to be assessed as owner, and in that capacity to be liable for the taxes. It is true that in the directions given to an Assessor as to the mode of preparing his roll, it is prescribed that in the 4th column he shall state, according to the best information to be had, whether the party is a Freeholder, Householder, Tenant, or Farmer's Son, by inserting opposite the name of the party the letter "F," "H," "T," or

"F S ;" and no doubt it is the intention of the Legislature that the description should be given by the Assessor. But I am of opinion that the failure of the Assessor to satisfy this incidental requirement of the statute, does not entitle the complainant, under the circumstances of this case, to have Haney's name struck off the list. He was, in point of fact, assessed correctly enough, because he was assessed as owner ; and the mere assessment, while rendering him liable for the taxes, did not entitle him even *prima facie* to vote, because the Assessor is not made the judge to determine whether there had been a sufficient residence. He now shows that he is entitled to vote in respect of this property for which he was entitled to be, and actually was, assessed as owner. The answer I have recently given in a case submitted by the County Judge of Halton (a), shows that under such circumstances a person should not be disfranchised, and that, if necessary, the notice may be amended, and the list corrected accordingly.

I have anxiously considered the general questions which the learned Judge suggests ; but I do not think that I can venture to propound any general rule as to the spirit in which the provisions of the Act are to be worked. The great principles which are kept in view have been enunciated in many cases, when their statement was apposite to the question under adjudication, and a repetition of these would be useless (b). A convenient summary may be found in Mr. Hodgins' very useful "*Manual on the Law affecting Voters' Lists*."

I may add, in relation to these "general questions," that I entirely concur with the observation made by Mr. Justice Patterson in answering a question proposed by the County Judge of Peel (c), where he points out the expediency of presenting a direct statement of facts.

THOMAS MOSS,
C. J. A.

Osgoode Hall, 11th January, 1879.

(a) See Case 6, p. 226.

(b) The Revising Barrister is substituted for a discussion at the polling booth, *pessimi exempli*, whether the party is qualified or not. The question for the Revising Barrister is, whether at the time when the claimant claims to be put upon the registrar he would, if an election was being held, be a party qualified to vote: *Per Erle, C. J., Powell v. Bradley*, 11 L. T. N. S. 603.

(c) See Case 2, p. 219.

CASE 10.—COUNTIES OF LEEDS AND GRENVILLE.

OPINION OF CHIEF JUSTICE MOSS.

Persons omitted from, but entitled to be entered on, the Assessment Roll may be entered on the Voters' List.

Persons entered on the Assessment Roll for real property or income, may be entered on the Voters' List for other property than that for which they should have been assessed.

A person assessed for statute labour may be entitled to be entered on the Voters' List; but he is to be treated as if his name did not appear on the Assessment Roll.

The Junior Judge of the County Court of the United Counties of Leeds and Grenville has submitted, for the opinion of the Court, a case of which the material facts may be thus stated:

A notice is given by a voter, in accordance with the Act, complaining that Ormond Jones, the younger, ought to be assessed as occupant or tenant of a certain lot owned by and assessed to William H. Jones. It was shown that Ormond Jones was a tenant under a demise which expired in the spring of 1878, when the term was verbally extended for a year. The property is of sufficient value to entitle him to vote, but his name is not entered on the Assessment Roll. The learned Judge was himself of opinion that Ormond Jones was entitled to be entered upon the Voters' List, but he notes that as there have been decisions which appear to conflict with this view, he deemed it better to state a case.

He therefore asks the following questions:

1. Is the respondent entitled to be entered upon the Voters' List, he having all the requirements except that his name is not entered upon the last revised Assessment Roll?

2. Is a respondent similarly situated, but whose name is entered upon the latest revised Assessment Roll, for other real property or for income, entitled to be entered upon the Voters' List for the property not assessed to him, but in respect of which he would have the right to vote had he been assessed for it, as he ought to have been?

3. Is a respondent, similarly situated, entitled to be entered upon the Voters' List in respect of the property for which he ought to have been assessed when his name is entered upon the last revised Assess-

ment Roll, not for property or income, but under secs. 77 and 79 of *The Assessment Act* for statute labour only ?

I answer the first question in the affirmative. I think that the reasonable construction to be placed upon the 8th section is, that persons in the position of Mr. Jones may be placed on the list ; but however that may be, the express language of the 22nd section puts the matter beyond doubt. No other intelligible construction can be suggested upon an enactment that " if any person not assessed is found entitled to vote, the municipality shall be entitled to recover taxes from him and to enforce payment thereof, as if he had been assessed on the roll, for the amount found by the Judge," except that it contemplates the possession by the Judge of the power of placing a voter's name upon the list, although it does not appear upon the roll.

As to the second question, I am of opinion that the appearance of a voter's name on the list in respect of other real property or income for which he was assessed (which, as I understand the question, is the only circumstance that distinguishes it from the first), does not make any difference in the right or liability of the voter to have his name associated upon the lists with the property for which he should have been assessed.

The third question must also be answered in the affirmative. For the purposes of the Voters' List, such a person is to be treated as if his name did not appear on the Assessment Roll.

THOMAS MOSS,

C. J. A.

Osgoode Hall, 11th January, 1879.

SCHEDULE OF FORMS.

237

SCHEDULE OF FORMS.

FORM 1.—(Section 2, sub-sec. 1, p. 5.)

FORM OF VOTERS' LIST.

Voters' List 18 Municipality of

SCHEDULE OF POST OFFICES.

1. North Augusta,
2. Maitland,
3. Wright's Corners,
4. Prescott.

POLLING SUB-DIVISION, No. 1, COMPRISING, ETC. :—(Giving the limits.)

PART I.—Persons entitled to vote at BOTH Municipal Elections and Elections to the Legislative Assembly.

No. on Roll.	Name.	Lot.	Con. or Street.	—	Post Office Address.
6	Anderson, Henry.	NW $\frac{1}{4}$ 6	3	Owner.....	1
14	Andrews, John	W. $\frac{1}{4}$ acres 8	1	Tenant.....	4
1	Archer, James.....	2	6	Income.....	4
50	Brown, Simon.....	W. $\frac{1}{4}$ 9	2	Landholder's Son	3
71	Burton, Samuel ...	E. $\frac{1}{4}$ 17	4	See Sub-Division, No.	2
	Etc.	Etc.	Etc.	Etc.	Etc.

PART II.—Persons entitled to vote at Municipal Elections ONLY.

No. on Roll.	Name.	Lot.	Con. or Street.	—	Post Office Address.
4	Archer, Henry.....	4	3	Owner.....	2
82	Burke, Edmund...	W. $\frac{1}{4}$ 17	4	Farmer's Son	3
	Etc.	Etc.	Etc.	Etc.	Etc.

PART III.—Persons entitled to vote at Elections to the LEGISLATIVE ASSEMBLY ONLY.

No. on Roll.	Name.	Lot.	Con. or Street.	—	Post Office Address.
43	Acroyd, James	N. $\frac{1}{4}$ 3	4	Tenant.....	3
8	Amos, Joseph	3	7	Owner.....	3
	Etc.	Etc.	Etc.	Etc.	Etc.

POLLING SUB-DIVISION No 2, COMPRISING, ETC. :—(Giving the limits).
 ETC., ETC., ETC.
 42 Vic. cap. 3, sec. 9; 48 Vic. cap. 3, sec. 3.

FORM 2. (Section 5, p. 28.)

CERTIFICATE TO BE ENDORSED ON VOTERS' LIST.

I, A B, Clerk of the Municipality of _____ in the County of _____, do hereby certify that parts one and three of the _____ within (or above) list constitute a correct list for the year 18 _____ of all persons appearing by the last revised Assessment Roll of the said Municipality to be entitled to vote at Elections for Members of the Legislative Assembly; and that parts one and two constitute a correct list for said year, of all persons appearing by the said roll to be entitled to vote at Municipal Elections in said Municipality; and I hereby call upon all electors to examine the said list, and if any omissions or other errors are perceived therein, to take immediate proceedings to have the said errors corrected according to law.

Dated this _____ day of _____

A B, Clerk of _____

FORM 3. (Section 7, p. 30.)

CLERK'S NOTICE OF FIRST POSTING OF VOTERS' LIST.

Voters' List, 18 _____ —Municipality of the _____ of _____
County of _____

Notice is hereby given, that I have transmitted or delivered to the persons mentioned in the third and fourth sections of "*The Voters' Lists Act*," the copies required by said section to be so transmitted or delivered of the list, made pursuant to said Act, of all persons appearing by the last revised Assessment Roll of the said Municipality to be entitled to vote in the said Municipality at Elections for Members of the Legislative Assembly and at Municipal Elections; and that said list was first posted up at my office, at _____ on the _____ day of _____, 18 _____, and remains there for inspection.

Electors are called upon to examine the said list, and, if any omissions or any other errors are found therein, to take immediate proceedings to have the said errors corrected according to law.

Dated, &c.

A B,
Clerk of said Municipality.

FORM 4. (Section 8, Sub-sec. 2, p. 38.)

VOTER'S NOTICE OF COMPLAINT ON GROUND OF DISQUALIFICATION. (a)

To the Clerk of the Municipality of the Town _____ of _____

I, *Angus Bell*, a voter (or "a person entitled to be a voter") in the said Municipality (or "for the Electoral District in which the Municipality is situated"), complain that the name of *John Jack* is wrongly entered in the Voters' List for the said Municipality, he being a person disqualified under the _____ section of "*The Election Act*." And take notice, that I intend to apply to the Judge in respect thereof, in pursuance to the statute in that behalf.

Dated the _____ day of _____ 18 .

ANGUS BELL,
Residence—Township of York.

FORM 5. (Section 8, Sub-sec. 3, p. 38.)

NOTICE AND APPLICATION BY VOTER TO WHOM THE PERSON ASSESSED HAS TRANSFERRED PROPERTY.

To the Clerk of the Municipality of the Town _____ of _____

I, *Luke Doran*, a person entitled to be a voter in the said Municipality, complain that the name of *Peter Short*, is wrongly inserted in the Voters' List for the said Municipality, he having before the final revision and correction of the Assessment Roll transferred to me the property in respect to which his name is entered on the said list (or "parted with the property in respect to which his name is entered on the Voters' List, and that I am in possession of the same"); And take notice, that I intend to apply to the Judge to have my name entered on the said list, instead of the said *Peter Short*, pursuant to the provisions of the statute in that behalf.

Dated the _____ day of _____ 18 .

LUKE DORAN.

(a) This notice should point out in more explicit terms the grounds of the alleged disqualifications;—such as naming the disqualifying office; or stating the corrupt practice charged against the voter. See notes (f) p. 38, and (y) p. 80.

FORM 5a. (Section 8, Sub-sec. 4, p. 39.)

NOTICE AND APPLICATION BY A PERSON UNDER THE AGE OF TWENTY-ONE YEARS.

To the Clerk of the Municipality of the _____ of _____

I, *F M*, hereby apply to have my name entered on the Voters' List (or Assessment Roll and Voters' List, *as the case may be*), for the Municipality of _____ on the ground that I will be of the full age of twenty-one years, on the _____ day of _____ 18____, being within sixty days from the date of the final revision and correction of the Assessment Roll, in respect of the following real property (*describing it*), or in respect of my income of \$ _____, *as the case may be*), pursuant to "*The Voters' Lists Act*."

Dated this _____ day of _____, 18____.

(Signed by applicant.)

FORM 5b. (Section 8, sub-sec. 5, p. 41.)

NOTICE AND APPLICATION BY A LANDHOLDER'S SON.

To the Clerk of the Municipality of the _____ of _____

I, *F A*, hereby apply to have my name entered on the Voters' List, (or Voters' List and Assessment Roll, *as the case may be*), for the Municipality of _____, on the ground that I am a landholder's son entitled to be assessed under the *Assessment Amendment Act*, in respect of the following real property (*describing it and giving father's name*), pursuant to "*The Voters' Lists Act*."

Dated the _____ day of _____, 18____.

(Signed by applicant.)

FORM 6. (Section 9, p. 45.)

VOTER'S NOTICE OF COMPLAINT.

To the Clerk of the Municipality of the Town of _____ of _____

I, *James Smith*, a voter (or "person entitled to be a voter") for the Electoral District of _____, in which the said Municipality is situated, complain (*state the names of the persons in respect to whom complaint is made, and the ground of complaint touching each person respectively—or set forth in lists as follows, varying according to circumstances*), that the several persons whose names are set forth in the subjoined list No. 1, are entitled to be voters in the said Municipality, as shewn in said list, but are wrongfully omitted from the Voters' List. That

the several persons whose names are mentioned in the first column of the subjoined list No. 2 are wrongfully stated in the said Voters' List, as shewn in said list No. 2. That the several persons whose names are set forth in the first column of the subjoined list No. 3 are wrongfully inserted in the said Voters' List, as shown in said list, No. 3. And that there are errors in the description of the property in respect to which the names respectively are entered on the Voters' List (or stating other errors), as shown in the subjoined list No. 4. And take notice, that I intend to apply to the Judge in respect thereof, pursuant to the statute in that behalf.

Dated the day of 18 .

JAMES SMITH,
Residence—Township of Beby.

Lists of Complaints mentioned in the above Notice of Complaint.

LIST No. 1 (shewing voters wrongfully omitted from the Voters' List.)

NAMES OF PERSONS.	GROUND ON WHICH THEY ARE ENTITLED TO BE ON THE VOTERS' LIST.
James Tupper.....	Tenant to John Frazer, of N. $\frac{1}{2}$ lot 1, 2nd Con.
Simon Beauclerk..	Owner in fee of N. W. $\frac{1}{4}$ lot 6, in 8th Con.
Angus Blain	Assessed too low—property worth \$

LIST No. 2 (shewing voters wrongfully named in the Voters' List.)

NAMES OF PERSONS.	POLLING SUB-DIVISION.	PART OF LIST.	THE ERRORS IN STATEMENT UPON VOTERS' LIST.
Joshua Townsend..	2	1	Should be Joseph Townsend.
John McBean.....	4	1	Should be John McBean the younger.
S. Connell.....	3	2	Should be Simon O'Connell.
			&c. &c.

LIST No. 3 (*showing persons wrongfully inserted in the Voters' List.*)

NAMES OF PERSONS.	POLLING SUB- DIVISION.	PART OF LIST.	STATEMENT WHY WRONGFULLY INSERTED IN VOTERS' LIST.
Peter White.....	4	1	Died before final revision of roll.
John May.....	3	2	Tenancy expired—left the country.
David Walters....	2	2	Assessed too high—property worth under \$ &c. &c.

LIST No. 4 (*showing voters whose property is erroneously described in
Voters' List, &c.*)

NAMES OF PERSONS.	POLLING SUB- DIVISION.	PART OF LIST.	ERRORS IN RESPECT TO PROPERTY OR OTHERWISE STATED.
Stephen Washburn	3	2	Name should be in Sub-division No. 2.
Thomas Gordon...	2	1	Property should be W. $\frac{1}{2}$ lot 7, in 3rd Con.
Ronald Blue.....	4	2	Should be described as owner, not tenant.

FORM 7. (*Section 9, p. 50.*)

CLERK'S REPORT IN CASE OF APPEALS AND COMPLAINTS TO THE JUDGE.

To His Honour the Judge of the County Court of the County of

The Clerk of the Municipality of states and reports that the several persons mentioned in the column 1 of the Schedule below, and no others, have each given to him (or "left for him at his residence or place of abode," as the fact may be) written notice complaining of errors or omissions in the Voters' List for the said Municipality for 18 , on the grounds mentioned in column 2 of the said Schedule, and that such notices were received respectively at dates set down in column 3 of the said Schedule.

Dated, &c.

A B,
Clerk of the said Municipality.

Schedule.

1. NAME OF COMPLAINANTS.	2. ERRORS OR OMISSIONS COMPLAINED OF.	3. DATE WHEN NOTICE OF COMPLAINT RECEIVED BY CLERK.

FORM 8. (Section 9, p. 50.)

JUDGE'S ORDER APPOINTING COURT FOR HEARING COMPLAINTS AND APPEALS.

To _____, Clerk of the Municipality of the

Upon reading your Report and notification respecting the Voters' List for the said Municipality for 18____, pursuant to the statute in that behalf, I appoint the _____ of _____ 18____, at the hour of _____ at _____ in the said County, for holding a Court to hear and determine the several complaints of errors and omissions in the said Voters' List, of which due notice has been given.

You are constituted Clerk of the Court.

You will advertise the holding of such Court, and post up in your office or the place in which the Council hold their sittings a list of all complaints of errors and omissions in the said Voters' List; and you will notify all parties concerned according to law.

Let the Assessor for the Municipality attend the sittings of the said Court, and let the original Assessment Roll of the Municipality for 18____, and the minutes of the Court of Revision for the Municipality for 18____, be produced before me or the acting Judge, on the day and at the place above mentioned.

Dated _____ day of _____ 18____.

Judge Co. Court, Co. of _____

FORM 9. (Section 9, p. 50.)

NOTICE TO BE POSTED BY CLERK IN HIS OFFICE WITH LIST OF COMPLAINTS.

Notice is hereby given, that a Court will be held, pursuant to "The Voters' Lists Act," at _____, on the _____ day of _____ 18____,

at _____ o'clock, _____ for the purpose of hearing all complaints made against the Voters' List for the Municipality of _____ for 18 _____, particulars of which complaints are shown in the subjoined Schedule.

All persons having business at the Court are hereby required to attend at the said time and place.

Dated, &c.

A B,
Clerk of the said Municipality.

Schedule.

NAME OF PARTY COM- PLAINING.	NAME OF PERSON IN RESPECT TO WHOM APPEAL WAS MADE.	GROUND OF COMPLAINT ALLEGED.

FORM 10. (Section 9, p. 50.)

CLERK'S ADVERTISEMENT OF COURT IN NEWSPAPER.

Notice is hereby given, that a Court will be held, pursuant to "*The Voters' Lists Act*," by His Honour the Judge of the County Court of the County of _____, at _____, on the _____ day of 18 _____, at _____ o'clock, to hear and determine the several complaints of errors and omissions in the Voters' List of the Municipality of _____ for 18 _____.

All persons having business at the Court are required to attend at the said time and place.

Dated, &c.

A B,
Clerk of the said Municipality.

FORM 11. (Section 9, p. 50.)

CLERK'S NOTICE TO PARTY COMPLAINING.

"*The Voters' Lists Act*."

You are hereby notified that, pursuant to the statute in that behalf, a Court for the Revision of the Voters' List, 18 _____, for the Municipality of _____, will be held by the Judge (or acting Judge) of the County Court of the County of _____, at _____, on the _____

day of _____, 18____, at _____ o'clock, at which Court all complaints duly lodged of any error or omission in the said list will be heard and determined. A list of said complaints is posted up in _____, and you are hereby required to be and appear at such Court; and take notice, that the Judge may proceed to hear and determine the complaints, whether the parties complaining appear or not.

By order of his Honour the Judge of the County Court of the County of _____

Dated _____ day of _____ 18____.

To

A person complaining of error in the
said Voters' List.

A B,

Clerk of the Municipality of _____, and
constituted Clerk of said Court.

FORM 12. (Section 9, p. 50.)

CLERK'S NOTICE TO PARTY COMPLAINED AGAINST.

"The Voters' Lists Act."

You are hereby notified that, pursuant to the statute in that behalf, a Court for the Revision of the Voters' List, 18____, for the Municipality of _____, will be held by the Judge (or Acting Judge) of the County Court of the County of _____, at _____, on the day of _____, 18____, at _____ o'clock, and you are required to appear at the said Court, for that _____ has complained that your name _____ is wrongly inserted in the said Voter's List ("because," &c., state matter of complaint concisely). A list of all complaints lodged is posted up in _____; and take notice, that the Judge may proceed to hear and determine the said complaint, whether you appear or not.

By order of his Honour the Judge of the County Court of the County of _____

A B,

Clerk of the said Municipality, and constituted
Clerk of the said Court.

To

Entered on said Voters' List.

FORM 13. (Section 10, p. 51.)

SEAL.

SUBPENA.

ONTARIO :
County of
To Wit.

VICTORIA, by the Grace of God, of the United
Kingdom of Great Britain and Ireland,
Queen, Defender of the Faith.

To

Greeting:

We command you, that, all excuses being laid aside, you be and appear in your proper person before our Judge of our County Court of the County of , at , on the day of , 18 , at o'clock in the noon, at a Court appointed, and there and then to be held, for hearing complaints of errors in the Voters' List for 18 , of the Municipality of the of , in the County of , and for revision of the said Voters' List, , then and there to testify to all and singular those things which you know in a certain matter (or matters) of complaint made and now depending before the said Judge, under "The Voters' Lists Act," wherein one is complainant, and which complaint is to be tried at the said Court. Herein fail not.

Witness, His Honour , Judge of our said Court at the day of , in the year of our Lord one thousand eight hundred and .

A B,
Clerk.

FORM 14. (Section 11, p. 58.)

REPORT OF CLERK WHEN APPLYING FOR CERTIFICATE.

To the Judge of the County Court of the County of .
I, , Clerk of the Municipality of , in the said County of , do hereby certify as follows:

That I did, on the day of , 18 , post up, and for a period of thirty days next thereafter keep posted up, in a conspicuous place in my office at , a true and correct printed copy of the Voters' List for the said Municipality of for 18 , made in pursuance of "The Voters' Lists Act," with the certificate required by section five of the said Act endorsed thereon.

That I did also duly deliver and transmit by post, by registered letter (or, "by parcel post registered," or, "by book post"), the required number of similar printed copies of the said Voters' List, with my certificate endorsed, to each and all of the persons entitled to the same under sections three and four of said Act.

That I did on the _____ day of _____, 18____, cause to be inserted in the newspaper called the "_____" published in _____, the notice required by section seven of the said Act.

That no person gave me nor did I receive any written notice of complaint and intention to apply to the Judge or Junior or acting Judge of the County Court of said County of _____ in respect to the said Voters' List within thirty days after I, the said Clerk, had posted up the said List in my office, as directed by the provisions of the said Act.

And that to the best of my knowledge and belief, I have complied with the several requirements of the said Act, so as to entitle me to apply for certified copies under the eleventh section of the said Act; and I do hereby, in pursuance thereof, now apply to you the said Judge to certify three of the copies of the said list received by you as being the Revised List of Voters for the municipality of the said _____ of _____ for the year of our Lord 18____.

Witness my hand this _____ day of _____ 18____.

Clerk of the Municipality of _____

P. O.

FORM 15. (Section 11, p. 58.)

CERTIFICATE OF NO COMPLAINTS.

County of _____

A B, Clerk of the Municipality of the _____ of _____, having certified under his hand that no complaint respecting the List of Voters for said Municipality, for the year 18____, had been received by him within thirty days after the first posting up of the same; and on application of the Clerk,

I, _____, Judge of the County Court of the County of _____ in pursuance of the provisions of "*The Voters' Lists Act*," certify that the annexed printed Lists of Voters, being one of the copies received by me from the said Clerk, under section three of the said Act, is the Revised List of Voters for the said Municipality for the year 18____.

Given under my hand and seal, at _____, this _____ day of _____, 18____.

Judge.

FORM 16. (Section 12, p. 61)

STATEMENT OF ALTERATIONS BY JUDGE.

Be it remembered, that upon a final revision and correction of the List of Voters of the Municipality of the _____ of _____ for the year 18____, pursuant to the provisions of "*The Voters' Lists*

Act," the following changes were duly made by me in the copies of the said list received by me from the Clerk of the said Municipality, viz.:

1. The following persons are added to the said List:—

NAME.	POLLING SUB-DIVISION.	PART OF LIST.	PROPERTY.

2. The following persons are struck off the said List:—

NAME.	POLLING SUB-DIVISION.	PART OF LIST.	PROPERTY.

3. The following changes are made in the property described opposite to the names of voters otherwise correctly inserted:—

NAME.	POLLING SUB-DIVISION.	PART OF LIST.	PROPERTY AS ORIGINALLY DESCRIBED ON LIST.	PROPERTY AS ALTERED.

4. The following changes are made in the names of voters incorrectly named:—

NAME ORIGINAL- LY ON LIST.	POLLING SUB-DIVISION.	PART OF LIST.	NAME AS ALTERED.	PROPERTY.

Witness my hand this day of A.D., 18 .

County Judge, County of

FORM 17. (Section, 12, p. 61.)

CERTIFICATE OF JUDGE.

I, _____, Judge of the County Court of the County of _____, pursuant to the twelfth section of "*The Voters' Lists Act*," do hereby certify that the above (*as the case may be*) is a corrected copy of the list of voters, for the year 18____, received by me from the Clerk of the Municipality of the _____ of _____, according to my revision and correction thereof, pursuant to the provisions of the said Act.

Dated at _____, this _____ day of _____, 18____.

Judge.

FORM 18. (Section 20, p. 78.)

ORDER FOR PAYMENT OF COSTS.

"*The Voters' Lists Act*."

In the matter of the Voters' List for the Municipality of _____, 18____, and of the complaint and appeal to the Judge of the County Court of the County of _____, by A B, complaining of the name of C D being wrongly inserted in the said list (*or, as the case may be, stating in brief the nature of the complaint*).

On proceedings taken before me, pursuant to the said Act, I find and adjudge that the name of the said C D was rightly inserted in the said list (*or, "was wrongly inserted in the said list"*), and order that the said A B do pay the said C D his costs occasioned by the said complaint (*or, "and order that the said C D shall pay the said A B his costs incident to the said complaint,"—or, "and order that E F, the Assessor of the said Municipality, being blameable for such wrong insertion, do pay the said A B his costs incident to the said complaint,—or, as the order may be, stating it in brief*), said costs to be taxed pursuant to the said Act.

Dated at _____, this _____ day of _____, 18____.

Judge.

FORM 19. (Section 21, p. 83.)

WRIT OF EXECUTION.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To the Sheriff of the _____

GREETING:

We command you that of the goods and chattels in your bailiwick

of C D, you cause to be made _____ dollars, for certain costs
 which lately, by an order of His Honour _____, Judge of the
 County Court of _____, dated the _____ day of
 _____, 18 _____, were ordered to be paid by the said C D to A B, as
 and for his costs sustained by him on the trial of a complaint against
 the Voters' List for the Municipality of _____, in the said
 County, for 18 _____, made and prosecuted under the provisions of "*The
 Voters' Lists Act*," which said costs have been taxed and allowed at the
 said sum, as appears of record; and have that money before Our Judge
 of Our said Court at _____ immediately after the execution
 hereof; and in what manner you shall have executed this Our writ,
 make appear to Our Judge aforesaid at _____ immediately
 after the execution thereof, and have you there then this writ.

Witness, His Honour _____, Judge of Our said Court, at
 _____, the _____ day of _____, in the year
 of our Lord 18 _____.

A B,
 Clerk.

FORM 20. (*Section 22, p. 83.*)

ORDER FOR ASSESSMENT OF PERSONS OMITTED FROM ROLL, &c.

*In the matter of Assessment for the year 18 _____, in the Municipality
 of _____*

The persons mentioned in the first column of the Schedules follow-
 ing not being assessed, or not being sufficiently assessed, on the
 Assessment Roll of the Municipality of _____, for the year
 18 _____, and having been found entitled to vote, on proceedings taken
 before me, _____ Judge of the County of _____, under "*The
 Voters' Lists Act*"—In pursuance of section 31 of the said Act, it is
 adjudged that the said parties mentioned in the first columns of the
 following Schedules respectively should have been assessed for the
 sums mentioned in the second columns respectively opposite their
 respective names, in respect to the land or other property or qualifica-
 tion mentioned in the third columns of said Schedules respectively
 opposite the respective names of said parties, and it is ordered that
 the said parties should be assessed accordingly.

Dated the _____ day of _____ A. D. 18 _____.

Judge.

Schedule 1.

Column 1.	Column 2.	Column 3.
Names of persons liable to have been assessed on the Assessment Roll for the Municipality of for the year 18 , but not assessed.	Amount for which the parties should have been assessed.	Property in respect to which the liability to assessment exists.

Schedule 2.

Column 1.	Column 2.	Column 3.
Names of persons not sufficiently assessed on the Assessment Roll for the Municipality of for the year 18 .	Amount for which the parties should be assessed in addition to the amount already on the Assessment Roll.	Property in respect to which the liability to assessment exists.

FORM 21. (Section 24, p. 86.)

APPLICATION TO JUDGE AGAINST DELINQUENT CLERK.

Pursuant to the twenty-fourth section of "*The Voters' Lists Act*," I, A B, Clerk of the Peace for the County of (or, "a person entitled to be named as an elector on the Voters' List for the Municipality of , for 18 ,") hereby inform His Honour the Judge of the County Court of the said County, that C D, Clerk of the Municipality of , in the said County, has failed to perform the duties required of him as such Clerk by the said Act, in this, that he the said C D has not made out the Alphabetical List of Voters for 18 , for the said Municipality, within thirty days after

the final revision and correction of the Assessment Roll thereof (or, "has not delivered or transmitted printed copies of the Voters' List for the said Municipality, for 18 , to and or to any of them," or, *as the case may be, stating in brief the duty not performed*), according to the requirements of the said Act; and I apply to you the said Judge to enforce the performance of the duties aforesaid, and to take such other proceedings as may be necessary.

Dated at , this day of A B, 18 .
Clerk of the Peace.

FORM 22. (Section 24, Sub-section 3, p. 87.)

SUMMONS.

"The Voters' Lists Act."

In the matter of the Voters' List for the Municipality of , in the County of , for 18 .

Whereas it appears by the application of A B, the Clerk of the Peace for the said County (or, "a person entitled to be named as an elector on the said List"), made to me, in pursuance of the said Act, that you, C D, the Clerk of the said Municipality, have failed to perform certain duties required of you by the said Act, in this, that you have not made out the Alphabetical List of Voters for 18 , for the said Municipality, within thirty days after the final revision and correction of the Assessment Roll thereof (or, *as the case may be, following the application*): and whereas the said A B has applied to me to enforce the performance of the duties aforesaid:

You, the said C D, are therefore hereby required to be and appear before me at my Chambers, in , on the day of , 18 , at the hour of , and then and there have with you and produce before me the Assessment Roll for 18 , for the said Municipality, and any documents in your custody, power or control, relating to the Assessment Roll, or to the Voters' List aforesaid; and then and there submit yourself for the examination on oath as may be required of you. Herein fail not at your peril.

Dated this day of 18 .
To C D,
Clerk of the Municipality of

Judge

INDEX.

- ABANDONMENT of appeal, 75.
ABATEMENT of complaint, 74.
ABSENCE, occasional, 207, 213, 214; compulsory, disqualifies, 176, 198, 203, 207.
ACTUAL OCCUPATION.—See OCCUPATION.
ACTUAL OCCUPATION.—See POSSESSION.
“AGE, FULL,” definition of, 6.
AGENT of objectors may sign notices, 46; may have inspection of documents, 114.
AGENTS FOR ELECTION disqualified, 186.
ALIENS disqualified, 147, 192, 198; clerk not to adjudicate respecting, 7; statutes respecting, 195.
ALLEGIANCE, law of, 192-195.
ALPHABETICAL list of voters, 2, 5, 9.
AMBIGUITY in Act, 13, 19, 63, 106, 109, 114, 135.
AMENDMENTS to be allowed, 73-75, 127, 129, 169, 219, 222, 231; statutory rules as to, in Provincial Courts, 73.
APPEAL from Court of Revision to Judge, 5; to Superior Courts, 65.
APPEAL, COURT of, opinions of Judges on cases submitted by County Judges, 117-121, 218-236.
APPEAL, notice of, 31, 33, 34, 41, 46, 49.
APPELLANT.—See COMPLAINANT.
ASSESSMENT of property, foundation of electoral proceedings, 4; fraud respecting, 72.
ASSESSMENT ROLL, *prima facie* evidence of right to vote, 2, 4, 9, 21, 36; final revision of, 3, 5, 21-23; binding on clerk, 6, 9; not binding at Revision of Voters' Lists, 35; Supplementary, 35, 83, 85.
ASSESSORS, duties of in assessing, 5, 16, 71, 72, 95, 180, 231; penalties on, 72, 79, 87, 96, 122.
ASSOCIATION, members of, when qualified, 160, 206.
ATTENDANCE of witnesses, 51-58; how enforced, 52, 54; fees for, 54.

BALLOTS, recount of, 122.

BENEFICIAL INTEREST gives the right to vote, 143, 145, 148, 152, 163.

BRIBERY, a disqualification, 103, 108, 198.

BRITISH SUBJECT, meaning of, 6, 192; clerk cannot determine right of, 6.

BRITISH TERRITORY, what is, 193.

CERTIORARI, lies to review limited jurisdiction, 53, 68.

CERTIFICATE of Judge on Voters' List, 61.

CHAMBERS, or Offices, when a qualification, 159, 173, 181.

CLERK OF MUNICIPALITY, duties of, respecting Voters' Lists, 3, 23, 25, 28, 30, 124; complaints, 45, 48, 49, 58; *Mandamus* to, 4; vacancy in office of, 28, 47; to be clerk of Voters' List Court, 48, 62, 70, 85; neglect to perform duties, 3, 24, 31, 58, 62, 86; penalties for, 3, 24, 80, 88, 89, 90; subject to summary jurisdiction of County Judge, 62, 63, 70, 80, 86; to allow inspection of documents, 116; to furnish copies of list, 64, 97, 121; fees of, 71, 97, 123; disqualified as a Municipal voter, 12.

CLERK OF THE PEACE, delivery of lists to, determines proper list, 63; complaint against Municipal clerk by, 86; penalty on, 90; to furnish copies of list, 97.

COMPLAINANT, who may be, 32, 77; death of, 75; may be examined, 54.

COMPLAINTS against Voters' List, 33, 34, 38, 41, 46, 49, 127, 129, 218, 219, 222, 224, 226, 227, 231, 235; when to be made, 29, 31, 41-46; how served, 45, 48.

COMPUTATION OF TIME, 22, 23, 42, 45, 59.

CONTEMPT OF COURT, 52, 57.

COMMON LAW, right to vote by the, 7, 141.

CONSTABLE, appointment of, 68, 70; fees of, 69, 125.

CORPORATION, members of a, not qualified to vote, 160.

CORRECTION OF LISTS without appeal, 127-130.

CORRUPT PRACTICES, a disqualification for Municipal Elections, 12; for Legislative Elections, 38, 103, 107; notice to be given of the charge, 38, 50.

COSTS, 80, 81, 88; execution for, 83.

COUNTY COURT may issue subpoena, 52; and execution for costs, 83.

COUNTY JUDGE, powers of, 35, 37, 40, 48, 49, 50, 51, 52, 61, 65, 68, 70, 71, 73, 77, 79, 80, 83, 127, 129, 169; to correct mistakes in lists, 127, 129, 132, 219, 222, 231; summary jurisdiction of, 62, 63, 65, 67, 70, 80, 86; as to costs, 80, 81, 88; to complete revision of Voters' List in two months, 61, 110; to sign and certify lists, 61, 63; Supplementary Assessment Roll by, 35, 37, 83, 85; review of his proceedings, 65-68.

COURT.—See REVISION OF VOTERS' LISTS.

COURT OF RECORD, powers of, 52.

CREDITOR, holding a conveyance in trust, cannot vote, 145, 146.

CRIME, a disqualification, 198, 209.

DEATH, of complainant, 75 ; of voter, 34, 38.

DESCRIPTION of qualification should appear, 16.

DISQUALIFICATIONS, 10, 12, 38, 103, 107, 185, 186, 197-199.

DOWERESS, husband of, may vote, 150, 154.

DUPLICATE VOTES not allowed, 14, 199.

DWELLING HOUSE, what, 181 ; structural severance in, 172, 181

EMPLOYMENT AT ELECTIONS disqualifies, 186-188.

EQUITABLE ESTATE gives vote, 155, 160, 206 ; not equitable right, 155.

EVIDENCE, *prima facie*, what, 15, 36, 37.

EXPUNGE NAMES, only on notice, 32, 38, 50, 58, 129, 222.

"FARMERS' SONS," their right to vote at Municipal elections, 8, 10, 33, 35, 104, 112, 229, 231.

FATHER AND SON, agreements between, 156, 167, 206, 231.

"FINAL OR FIRST REVISION" of Assessment Roll, meaning of, 4 ; proceedings respecting, 5.

FINALITY OF VOTERS' LISTS on the right to vote, 2, 101, 106.

FLATS in buildings, what are, 172.

FORMS, schedule of, 99, 133, 134, 237 ; deviations from, not to invalidate, 99.

"FORTHWITH," meaning of, 30, 60.

FRANCHISE, is a Common Law right, 7, 141 ; construction of statutes regulating, 74, 129 ; modern political legislation respecting, 7 ; history of, 7 ; table of, 8.

FRAUD in assessment, 72, 78, 95, 96, 122, 224 ; in Voters' List, 90.

FREE AND COMMON SOCCAGE, what is, 144.

"FULL AGE," what is, 6.

GOOD FRIDAY, service of notices on, 44.

HEAD OF MUNICIPALITY, service of complaints on, 45, 48, 51

HEARING OF COMPLAINTS, 50, 61, 127, 129.

HOUSEHOLDER FRANCHISE, 8, 12, 33, 34, 182.

HUSBAND, when entitled to vote in respect of his wife's property, 147, 162, 168 ; when not, 148, 152, 163, 169 ; may qualify on wife's property for municipal office, 152.

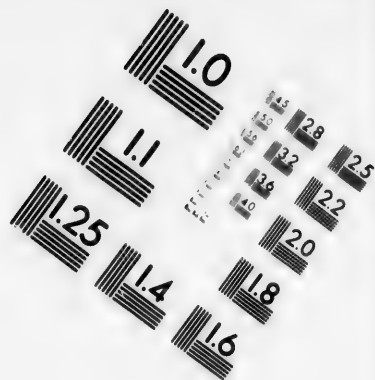
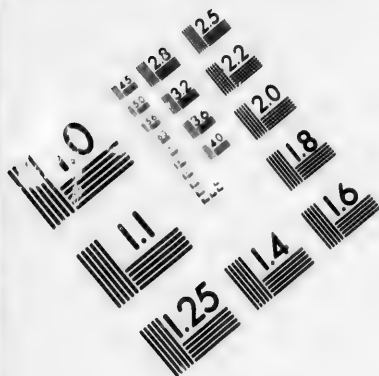
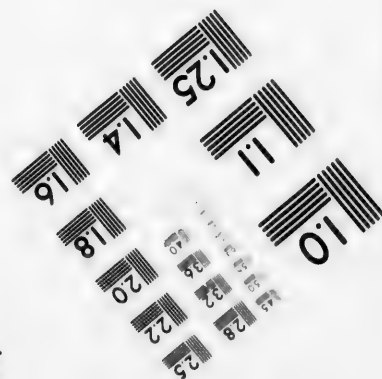
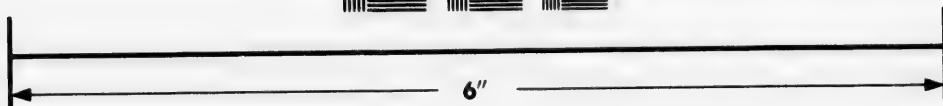
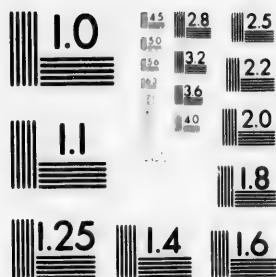


IMAGE EVALUATION TEST TARGET (MT-3)



**Photographic
Sciences
Corporation**

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

1.5 2.8 2.5
1.5 3.2 2.2
3.6 2.0
1.8

1.1
1.0
0.1

- IDIOTS, incapacitated from voting, 197.
"IMMEDIATELY," meaning of, 30.
IMPRISONMENT OF VOTER, how far a disqualification, 176, 198, 203, 209.
INCOME, definition of, 209.
INCOME VOTER, qualification of, 8, 12, 18, 209, 210, 218; appeals respecting, 33, 35, 40, 218, 235.
INDIANS, when qualified, 13, 214-216; contracts with, 169; enfranchised, 215.
INFANTS cannot vote, 6, 34, 192, 197.
INHABITANT, who is an, 176, 182.
INSPECTION of complaints, applications and other papers, 114; enforceable by *mandamus*, 115.
INTERPRETATION of terms, 99, 102, 142.
IRREGULAR PROCEEDINGS, 49, 70, 224; when amendable, 48, 223.
- JOINT OWNERS, 160, 204.
JOINT TENANTS, 172, 183, 204, 206.
JUDGE.—See COUNTY JUDGE.
JUDGES disqualified from voting, 10, 185.
JUDICIAL DISCRETION, what is, 79, 82.
JURORS' NAMES to be noted on the Voters' List, 131, 135.
- LACHES, effect of, 44.
LANDHOLDERS' SONS FRANCHISE, 8, 13, 33, 35, 113, 175-180, 212, 231; who included in, 18, 104, 175, 180 xix.; residence of, 20; appeal respecting, 33, 35, 41, 55, 135, 231.
LANDLORD AND LODGER, 172, 181, 183, 202, 206.
LANDLORD AND TENANT, appeal affecting, 221.
LEGAL INCAPACITY to vote, 6, 34, 109, 192, 197.
LEGISLATIVE ELECTIONS, qualifications of voters for, 8, 12, 33, 192; lists of voters for, 9.
LICENCE OF OCCUPATION, 160.
LIFE ESTATE, a freehold, 153, 155.
LODGER, letting to, 172, 183.
LUNATICS, when disqualified, 197; when not, 198.
- MANDAMUS, Writ of, lies to inferior tribunals, 66; public duties enforceable by, 4, 48, 64, 66, 115, 126.
MANHOOD SUFFRAGE, a common law right, 7, 141.

- MARRIAGE**, Husband's estate in wife's property on, 146, 148, 152.
See also, WIFE.
- MARRIED WOMEN'S PROPERTY ACTS**, 146, 168, 150, 163 ;
 alters the husband's estate by common law, 150, 153, 163 ; hus-
 band may be excluded from wife's property under, 149, 152 ;
 canons in Franchise law under, 153.
- MILITARY SERVICE**, its effect on actual residence, 208.
- MILITIA SERVICE**, its effect on actual residence, 208.
- MINISTER OF A CONGREGATION**, when qualified, 83, 155, 159.
- MINORS**, when they may be entered at final revision of lists, 40.
- MISFEASANCE**, punishment for, 1, 24, 80, 87, 89, 90, 94, 122.
- MISNOMER**, complaints respecting, 34, 127 ; will not invalidate, 34.
- MISTAKES**, not to disqualify, 18, 24, 127, 129 ; of Printer, 25 ; of
 Revising Judge, 62 ; power to correct, 127, 129, 173, 219.
- MORTGAGEE** in possession may vote, 145.
- MORTGAGOR**, in or out of possession, may vote, 145.
- MUNICIPAL ELECTIONS**, qualifications of voters at, 8, 10, 11, 33 ;
 lists of voters for, 10, 11 ; disqualifications for, 12.
- MUNICIPAL OFFICE**, wife's property may qualify for, 152.
- MUNICIPALITY**, to provide a Court-room, 64 ; liability of, 80.
- NATURALIZATION**, laws affecting, 195-197.
- NEGLIGENCE OF CLERK**, effect of, 3, 24, 31, 58, 62, 80.
- NOTICE on Voters' List**, 28, 238 ; effect of, 29, 59.
- NOTICE of objections**, service of, 45.
- NOTICE**, person affected to have, 38, 48, 50, 54, 58, 80, 83, 221, 222.
- NOTICE of hearing of appeal**, 48, 49, 51.
— where to take 45
- OBJECTIONS**, to Voters' List, 29, 31, 33, 34, 41, 46, 49, 127, 129,
 218, 222, 226, 227, 231, 235 ; inspection of, 114 ; service of, 45.
- OBJECTOR**, withdrawal of, 75 ; death of, 75 ; may be examined, 54.
See COMPLAINANT.
- " OCCASIONALITY,"** what constitutes, 71, 92.
- OCCUPANT**, definition of, 160-170, 226 ; in right of wife, 162 ;
 objections respecting, 33, 226.
- " OCCUPANTS' SONS,"** not included in the franchise, 18, 176, 212.
- OCCUPATION**, actual, what is, 164, 166 ; break in, 176, 201, 207,
 209.
- OFFICES**, or Chambers, 159, 173, 181.
- OFFICERS**, certain, disqualified for legislative elections, 10, 34,
 38, 109 ; may vote at Municipal Elections, 10.
- OFFICERS** occupying premises, right to vote, 169, 181, 202.

- OFFICERS, PUBLIC, to post up lists in offices, 27, 29.
- OWNER, definition of, 143; joint occupation with, 156, 167, 173, 181, 206; appeal by, 33, 39, 218, 222.
- PARLIAMENT, common law of, 7, 142, 150, 189.
- PARTNERS, when qualified, 160, 206, 207.
- PENALTIES for neglect of duty, 1, 24, 80, 87, 89, 90, 94, 122.
- PERSONS entitled to Voters' Lists, 27, 60.
- PLACE OF ABODE to be stated in list, 19, 20, 134, may be corrected, 128.
- POLITICAL INTELLIGENCE, measure of, 7, 142, 179.
- POLLING SUB-DIVISION.—See VOTERS' LIST.
- POSSESSION, actual, 164-166, 176; break in, 176, 201, 207, 209.
- POST OFFICE, services of notices by, 26, 56; mistakes by, 26, 56, 57, 132.
- POST OFFICE LETTER, property in, 26.
- POSTING UP Voters' Lists, 25, 29; effect of, 25, 30, 60.
- POSTMASTERS, when disqualified, 185.
- PRODUCTION of papers and documents by witness, 53.
- PROHIBITION, writ of, lies to County Judge, 67.
- PROPRIETOR, in his own right, 144, 202; in right of his wife, 146, 152.
- PUBLICATION in a newspaper of posting lists, 25, 30; of holding Court, 50.
- QUALIFICATION OF VOTER, rule for determining, 234.
- REAL PROPERTY FRANCHISE, for Municipal elections, 8, 10; for Legislative elections, 8, 12.
- REASONABLE TIME, 30, 45, 53.
- REFUSAL to register voter, actionable, 1, 87, 89, 90.
- REGISTRATION, system of, 1, 2; essential to right to vote, 1, 5, 9, 31.
- RENT, what is, 173; payable in money's worth, 174, 175; improvements as, 174; receipt of, without title, gives no vote, 158, 174.
- RESIDENCE, *prima facie*, 15; actual, what, 164, 176, 200, 207; break in, 176, 207; constructive, what is, 208; compulsory absence from, 207; for Municipal elections, 8, 20; for Legislative elections, 8, 19, 20, 108, 164, 176, 199, 200, 207; two residences, 15, 178, 207. See SLEEPING APARTMENT.
- RESIDENT INHABITANT, meaning of, 176, 182, 201, 207.
- RETURNING OFFICER disqualified, 109, 186.

REVERSIONER, when he may vote, 154, 170.

REVISION, COURT of, 5, 36, 50, 224; appeal from, 5, 22, 39, 224.

REVISION OF VOTERS' LISTS, Court for, 39, 51, 64, 85, 105.

REVISION OF ASSESSMENT ROLL, rules for date of, xviii., 22; effect of, on title, 157, 162, 218, 222.

REVIVOR on death of claimant or objector, 77.

SCRUTINY OF VOTES, 104.

"SEPARATE ESTATE OF WIFE," how created, 148, 149; excludes husband's right to vote, 148, 153; and his right of possession, 149, 152.

SERVANT, occupation of premises by, 202.

SERVICE OF NOTICES, 26, 45; of subpoena, 53, 56.

SEVERAL PROPERTIES added together for qualification, 20, 202.

SHAREHOLDERS in companies, not qualified, 160.

SIGNATURE of claimant or objector, 46.

SLEEPING APARTMENT infers residence, 15, 176, 178, 207, 209, 229.

"SON," definition of, 180.

SOVEREIGNTY of people, their right of suffrage, 141.

SPECIFIC PERFORMANCE, right to, gives vote, 155.

SQUATTER on Crown Lands, his right to vote, 161; not qualified for Municipal office, 162.

STATUTES, general, construction of, 4, 45, 51, 136, 163; ambiguities in, 4, 13, 19, 63, 106, 109, 114, 135; when imperative, 30; 118, when directory, 28, 63, 85, 86, 110.

STUDENTS, absence from residence as, 208, 214.

SUBPŒNA, how issued, 52, 58; service of, 53, 55, 56; contempt of, 52, 57.

SUB-TENANTS, 170, 173.

SUMMONS.—See SUBPŒNA.

SUNDAY, service of notices on, 43.

SUPPLEMENTARY ASSESSMENT ROLL, 35, 37, 83, 85.

TABLE OF QUALIFICATIONS for Legislative and Municipal Electors, 8.

TAXATION, an element of qualification for franchise, 83, 201, 210.

TECHNICAL RULES not binding, 48, 74, 129.

TENANT, definition and qualification of, 170-174, 179, 202; objections respecting, 33, 39, 83, 221, 227; lodger as, 172, 181, 183.

TENANT-AT-WILL, 170, 202; when qualified, 203, 206; when not, 155, 162, 203.

TENANT-BY-THE-CURTESY, may vote, 147, 150, 153.

TENANT-IN-COMMON, 206.

TIME, computation of, 22, 23, 42, 45, 59.

TRANSFERREE OF PROPERTY, personal right to apply, 39, 218, 222, 227.

TRANSFERROR OF PROPERTY, right to apply, 39, 218, 222, 227.

TRUSTEE not entitled to vote, 145, 155, 159.

USE AND OCCUPATION, beneficial, 143, 145, 148, 152, 163.

VALUE.—See ASSESSMENT ROLL.

VENDOR AND VENDEE, rights of, as to voting, 155.

VOLUNTEERS in militia, absence from residence on service, 208.

VOTER, definition of, 32, 104; complaints respecting, 33, 39, 127, 129, 218, 227; to be registered in one polling division, 13-15; duplicates votes as, not allowed, 14, 199; rule for determining right of, 234.

VOTERS' LISTS; foundation of the right to vote, 1, 9, 31, 41, 60, 63, 224; posting of, 25, 27, 29, 60; copies to be sent to various persons, 27, 60; notice on, 28, 238; binding, on Election Court, 32, 37, 41, 61, 106; price of copies of, 97.

VOTES, illegal multiplying of, 71, 72, 91.

WAGE-EARNER FRANCHISE, 8, 12, 33, 37, 180, 211; appeal respecting, 37, 41, 55, 135, 218, 235.

WARD OF MUNICIPALITY, ambiguity respecting, 13, 15, 19.

WIFE, when her husband may vote in respect of her property, 146, 162; her right to possession of her property, 149, 152, 169; her "separate estate" not a qualification, 148, 153, 163, 169; except for Municipal office, 152. See MARRIED WOMEN'S PROPERTY ACTS.

WILFUL REFUSAL to register voter; reasonable notice imputes.

WITNESSES, subpoena or order for, 51; compelling attendance of, 51-58; scale of fees for, 54, 82.

WOMEN have now no common law right to vote, 11, 109, 188-192; their former right, 164, 189; marriage a disqualification, 191; offices held by, 189; a woman is not a "person" within the Election Act, 188; may vote at municipal elections, 11, 139.

3.

o apply, 39,

39, 218, 222,

2, 163.

service, 208.

3, 39, 127, 129,

13-15; dupli-
cating right of,

9, 31, 41, 60,

ent to various
ection Court,

211; appeal

13, 15, 19.

property, 146,

152, 169; her

3, 169; except

N'S PROPERTY

otice imputes.

attendance of,

109, 188-192;

ification, 191;

" within the

ns, 11, 139.